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CIS

FEDERAL REGULATION

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY, NUCLEAR PROLIFERATION, AND GOVERNMENT PROCESSES

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

Part 2

JULY 1, 1981

QUINCY, ILL.

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FEDERAL REGULATION

WEDNESDAY, JULY 1, 1981

U.S. Senate,
Subcommittee on Energy, Nuclear Proliferation,
and Government Processes,
Committee on Governmental Affairs,
Quincy, Ill.

The subcommittee met, pursuant to call, at 9 a.m, in the Quincy City Council Chambers, Quincy, Ill., Hon. Charles H. Percy (chairman of the subcommittee) presiding.

Present: Senator Percy.

Also present: William A. Strauss, chief counsel and staff director; Rob Portman, professional staff member; Hal Smith; John Caldwell; and Jeanne Obcamp.

OPENING STATEMENT OF SENATOR PERCY

Senator Percy. Good morning. I wish to express my appreciation to everyone who has worked with us in making this hearing possible; particularly, the chamber of commerce which has been very thoughtful in every respect, and the city officials who, as always, have been very helpful.

I am very pleased to bring the Subcommittee on Energy, Nuclear Proliferation, and Government Processes to Quincy to learn firsthand about the effects of Federal regulation on the people of Illinois. This is a subcommittee on the Governmental Affairs Committee which has oversight over the structure and organization of the executive branch of the Government.

We all know that regulation is expensive. Federal rules alone cost us over $100 billion per year and create an intolerable drag on productivity. Federal regulation is frustrating, time consuming, and frequently annoying. Each year we spend 1.2 billion hours filling out thousands of Federal forms, applications, and questionnaires. Many times this paperwork is duplicative; seldom do we understand its purpose or significance. And, the burden of regulation usually falls unfairly on small business—the most competitive, dynamic, and innovative sector of our economy.

So the question is what can we do about this? In the past, those faced with excessive regulation burdens had nowhere else to turn. Until this year that is. Now we have a golden opportunity to turn things around.

We have a President who is committed to regulatory reform. We also have a Congress that is acting to change our regulatory process for the better. The Paperwork Reduction and Regulatory Flexibility Acts of 1980, already enacted, will help reduce regulatory burdens, especially for small business. In addition, Senator Laxalt's regulatory reform legislation, which I have cosponsored, calls for cost-benefit analysis, judicial review, and reevaluation of rules already on the books. These are tough measures, but they are not yet law.

The best way to relieve unreasonable regulatory burdens is to talk with people being hurt by them the most. That is why I am here today—to listen and to learn. That is why I have held a similar hearing in Rockford, Ill., this spring and will hold one tomorrow in Peoria. In addition, I have asked Bill Strauss, the chief counsel of this subcommittee, to meet individually with dozens of businessmen in Illinois who have raised concerns about Government regulations.

I want to stress the importance of this project. This is the only State in the country where hearings like these are being held. The administration is very interested in what is being said here today. I have received letters from Vice President George Bush and from Mr. James Miller, Executive Director of the Vice President's Task Force on Regulatory Relief, expressing their interest in these hearings and their eagerness to receive the results. I'll put those letters in the record of these hearings. And, incidentally, a complete record of these hearings will be made available to anyone who wishes to write to me for a copy.

Now, I would like to read a brief excerpt from Mr. Miller's letter. Mr. Miller, who heads the Task Force for the Vice President on Regulatory Reform states:

> The series of hearings and meetings that you are conducting throughout the State of Illinois will be extremely helpful to the administration's regulatory relief efforts affecting business, labor and consumers in Illinois. We look forward to receiving the results of your subcommittee hearings, and also look forward to working with you to relieve the regulatory burdens identified by the people of Illinois.

And because Illinois represents such a good cross-section of interests shared by the rest of the country, I have no doubt that most of the problems uncovered in Illinois have been experienced by others throughout the country.

[The letters referred to follow:]

THE VICE PRESIDENT,
Washington, June 6, 1981.

Hon. CHARLES H. PERCY,
U.S. Senate,
Washington, D.C.

DEAR CHUCK: Thank you for your recent letter and for your kind words in support of our efforts to reduce the regulatory burden.

Your input is always welcome and we look forward to receiving the results of the hearings which your Subcommittee is conducting. I have asked my able Counsel, Boyden Gray, to keep in touch with you. I have also noted your comment with regard to an Administration witness at your hearings and will check this out.

Again, thanks for writing. Hope to see you soon.

Sincerely,

GEORGE BUSH.

OFFICE OF THE VICE PRESIDENT,
Washington, June 26, 1981.

Hon. CHARLES H. PERCY,
U.S. Senate, Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR PERCY: I would like to take this opportunity to thank you for your support of President Reagan's regulatory relief program. As you know, regulatory relief is one of the cornerstones of the President's program for economic recovery. Along with the other components—a stringent budget policy, an incentive tax policy, and a stable monetary policy—regulatory relief will help restore the health of our economy.

The series of hearings and meetings that you are conducting throughout the State of Illinois will be extremely helpful to the Administration's regulatory relief efforts by providing examples of specific regulatory burdens affecting business, labor and consumers in Illinois. As Vice President Bush mentioned in his letter to you of June 6, 1981, we look forward to receiving the results of your Subcommittee hearings, and also look forward to working with you to relieve the regulatory burdens identified by the people of Illinois.

In addition, I am very pleased that Tom Hopkins, my deputy in the Office of Information and Regulatory Affairs, will have an opportunity to testify at your hearing in Peoria on behalf of the Reagan Administration. If there is any other way we can assist you in this most worthwhile project, please let me know.

Again, thank you for your contributions to our regulatory relief efforts.

Sincerely yours,

JAMES C. MILLER III,
Executive Director, Presidential Task Force on Regulatory Relief.

Senator PERCY. Joining me today on behalf of President Reagan is Mr. David Metzger of the Small Business Administration. As special counsel for the special counsel for the SBA's Office of Advocacy, Mr. Metzger plays a key role in regulatory review process. The Office of Advocacy has primary responsibility for enforcing the Regulatory Flexibility Act of 1980. This rule requires agencies to prepare a special analysis to measure the impact of their rulemaking on small business and other organizations. Mr. Metzger has expressed a strong interest in hearing about your experiences with Federal regulations. He, too, is here to listen and to learn.

Following these hearings, I will submit a report of my findings and recommendations to the Vice President's Task Force and the Office of Management and Budget. The report will be based solely on the regulatory problems and concerns identified in these hearings.

In sum, what you say today will be heard and will make a difference.

Clearly, not all regulation is bad. That is why we will try to get a balanced perspective in this regulatory reform project, hearing as often as possible from environmental and labor groups, as well as business, Government, and other organizations.

And when I say all regulation is not bad, there is no one that I've heard that seriously has proposed that we do away with FDIC, Federal Deposit Insurance Corporation. That agency has helped to prevent runs on banks, insuring our savings on a national basis. That's a kind of regulation that we respect and have found extremely valuable.

In addition, no one is going to do away with, for instance, the Securities and Exchange Commission. This has been a regulatory agency that has been helpful. Nor is anyone going to do away with the Nuclear Regulatory Agency. We know that when you build nuclear plants, certain safety standards must be maintained. What we're talking about is the kind of regulation that simply is not cost effective. In other words, rules whose benefits cannot support their costs.

Finally, excessive or unnecessary Federal regulations are but one contributor, albeit a major one, to our current economic recession. Skyrocketing interest and inflation rates, sagging productivity and investment, and depressed expectations have all contributed to our economic problems. The road to recovery will be slow and steady. But I believe the first signs of recovery are just around the corner. President Reagan's four-point economic restoration plan of tax cuts, spending reductions, stable monetary policy, and regulatory reform, given a fair chance to unfold, will provide just the antidote needed for our ailing economy. I fully support the President's economic program and will work for its passage.

Today, we can help the President carry out a major part of his recovery program by presenting him with a case study of the effects of Federal regulation on the economy of the great State of Illinois.

It is with a tremendous amount of pleasure that I introduce a friend of all of us, the Hon. David Nuessen, Mayor of Quincy, as our leadoff witness today. Mayor Nuessen is truly one of Illinois' outstanding young men. In little more than one term, Mr. Mayor, you have already distinguished yourself as one of our State's finest administrators. You and I have worked closely together in a successful effort to win a UDAG grant for the city of Quincy, which allowed the Cummins Engine Co. to locate here. This created hundreds of new jobs for the community, and we anticipate it will continue to expand and grow and prosper.

Mr. Mayor, your perspective on Government regulation represents the views of the entire community. Your testimony will be an important contribution to our effort to identify and eliminate unnecessary regulation. We all look forward to hearing what you have to say. Glad to have you here this morning.

TESTIMONY OF HON. C. DAVID NUESSEN, MAYOR, QUINCY, ILL.

Mr. Nuessen. It's nice to be here, Senator. On behalf of the citizens of Quincy and west-central Illinois, I welcome you to Quincy in your quest for information for your subcommittee.

This being the second of three scheduled hearings in Illinois, we, in Quincy and west-central Illinois, hope you can gather meaningful data from Government officials, local business leaders, and others who will testify today.

As chairman of the Senate Governmental Affairs Subcommittee on Energy, Nuclear Proliferation, and Government Processes, I hope you will take back to Washington the problems and concerns you hear today and share those with our President Reagan, Vice President Bush, and your Senate colleagues.

Your schedule today is full, but permit me to cite just two examples of Federal regulations involving the city of Quincy.

The first involves the Federal Highway Administration. The city of Quincy's Engineering Department is currently designing an improvement of 36th Street from Broadway to State Street, a distance of approximately 8 blocks. To enable the city to widen this street from two to four lanes, Federal regulations require that an environmental impact statement be completed.

The preparation and filing of this environmental impact statement has already resulted in a delay of 3 months. While the city waits for approval of the statement, each day we get closer to the September 1981 bid-opening date established by the Illinois Department of Transportation. The city would not like to be put in the position of having this major construction project delayed beyond the proposed construction date. If this project is delayed until next year, inflation would certainly drive up the cost. The added delay would be a disservice to the citizens of Quincy and to our industrial sector.

In all good conscience, I can't see the merit of much of the information required in the environmental impact statement. Is a Quincy driver really concerned about the noise level as he drives on 36th Street? I think not.

If Government officials really believe that air and noise pollution studies are essential, why not let the State officials conduct them and eliminate one level of bureaucracy.

Another concern is the seeming overlapping of the Illinois Department of Transportation by the Federal Highway Administration. The State of Illinois is divided into 10 districts that oversee highway considerations for a geographic section of the State. The district office which encompasses Quincy is located in Springfield. Interestingly enough, the Federal Highway Administration has a district office in Springfield. As I understand it, the Illinois Department of Transportation district office oversees projects funded by the State of Illinois, while the Federal Highway Administration district office in Springfield oversees Federal highway projects. Is this duplication really necessary?

Additionally, representatives from IDOT come to Quincy to check the payroll records of contractors to see if the prevailing wage is being paid on State projects. Not to be outdone, the representatives from the Federal Highway Administration office visit area contractors to determine the same information for Federal projects. I ask again—is this duplication really necessary? In fact, what value do taxpayers receive knowing that Federal bureaucrats have determined that contractors have complied with this regulation? Why not take the money spent for this purpose and build or maintain highways with it?

Let me cite another concern which affects the citizens of Quincy. We are currently in the throes of deciding the specific location of a Quincy bridge crossing the Mississippi River. The Illinois Department of Transportation has reduced the possible bridge locations from six to two—one being at Locust Street and the other at Broadway.

The Illinois Department of Transportation is waiting approval of the environmental impact statement from the Federal Highway Administration. There is a question in the minds of many citizens that some families lives will be considerably altered if the Locust corridor is selected. Additional right-of-way will have to be purchased by the State of Illinois for this construction of a Locust Street bridge. The environmental impact statement seems to provide for the protection of Quincy's snail darter, but doesn't allow for the consideration of 15 to 20 families and how a bridge location would affect them.

The Locust Street location would go through city parks. Why should someone in Washington, D.C., have the ultimate authority about a bridge or highway going through a city park? Why not let the local citizens who use the parks, finance and maintain them, have this authority. Give the authority back to the people, where it rightly belongs.

The second example I will cite is the city's obtaining new buses for our public transit system.

City fathers in 1973 decided to make an application for a Federal grant to assist the city in acquiring new buses. A transit development plan was the first of many Federal requirements completed by the city for its grant application.

You will be pleased to learn that after 7 short years from initial action by the city, eight new buses and supporting equipment were received. The $1.2 million grant was obtained through the Urban Mass Transit Administration. Let me point out that some of the delays were not entirely the fault of the Federal Government. The city did not have, and could not afford to hire, the people necessary to spend all of their time on this project. My point is, I believe some of the Federal regulations should be reviewed to determine their necessity.

Prior to the city receiving its eight new buses, approximately 1 year ago, the city provided transportation for handicapped citizens. A specially equipped van was radio dispatched to the homes of handicapped persons. The van driver could pull up to the front door, get out of the van and go to the person's front door to assist him getting into the van. This provided an extremely good service for our handicapped citizens.

When the city had prepared its bid specifications to acquire the new buses, a new Federal regulation was imposed which required a lift for handicapped citizens on all eight buses. The city's bid specifications had to be revamped to allow for this change.

In 1980, the city recived its eight new buses, all equipped with a chair lift for the handicapped. Theoretically, the idea of having a lift on buses may be good, but in reality, it is a disaster.

For those handicapped people who live on a bus route, the regular city bus, which is equipped with a lift, will stop at their house. The bus driver, because he is on a tight schedule, cannot leave his bus to go to the front door of a handicapped citizen to help him. Many handicapped have difficulty getting out of their front door and down the sidewalk or driveway.

Quincy's handicapped citizens have used the chair lifts on our eight buses a total of 16 times since the buses were put into service 11 months ago. This is not 16 times per bus, but 16 times for all eight buses—an average of once every 3 weeks. Our mechanics, as a maintenance procedure, operate the lift daily on each of the eight buses just to make sure it is functioning properly.

The city was providing good service for our handicapped citizens with our van. Now we have duplicated service. We still use our van for transporting handicapped citizens, but we seldom use our lifts on the eight new buses. In addition to the chair lifts, bifold doors had to be installed for the lifts, plus two special folding seats and brackets for holding wheelchairs in place inside the bus had to be purchased for each of the buses.

Was the requirement of a chair lift on each of the eight new buses a good expenditure of our tax dollars? I think not.

These are but two examples of how the city of Quincy has, and is still being, affected by what I consider to be excessive regulations. I could have mentioned the regulations promulgated by the Federal Environmental Protection Agency concerning our water and sanitation sludge that will cost the citizens of Quincy hundreds of thousands of dollars to comply with those regulations. I believe the time has come to end this excessive regulation by the Federal Government.

I believe President Reagan said it most succinctly in his inaugural address: "Government is not the solution; it is the problem." Thank you.

Senator PERCY. Thank you very much Mr. Mayor. Let me ask you about one Federal program in particular, Federal revenue sharing. Do you feel that it is a good program and of benefit to Quincy?

Mr. NUESSEN. I think definitely the Federal revenue-sharing program is a good program as a Federal Government sponsored program, and certainly your authorship of that particular program has been of tremendous benefit to the cities, and the people throughout the city of Quincy, the State of Illinois, and the country, as a matter of fact. It seems to me that we need to encourage more of those kinds of Federal programs rather than thinking about the elimination. The fact is that Quincy receives about $1 million a year in Federal revenue sharing.

As I understand it, the overhead cost for administration of that program is 1 percent, therefore, it's 99-percent effective, and I think that we can do with more Federal programs of 99-percent effectiveness. Additionally, there are virtually no strings attached other than those that I think rightfully ought to be such as minority hiring quotas, and, as I am appointed, that's the only regulation or only strings attached to that program, so I think that's a good program, and they are good programs, and those are the kind we should try seeking out.

Senator PERCY. I would like to follow up on your response by adding that the administrative cost of this program is much less than 1 percent. It's actually one-tenth of 1 percent. In administering the program we dispensed about $40 to $50 billion. There are no corresponding regulations other than the requirement to hold a hearing, let people discuss what they think the money ought to be spent for, and then publish a report saying where it's been spent. You don't have to send any report to Washington. It's all done locally.

In all the years we had that program—it was introduced by my classmate, Howard Baker, and myself when we first went to the Senate—and in all those years there has not been one frivolous scandal about any misappropriation of funds. That's an unbelievable record. It was all based on our faith that mayors of our cities and the city councils knew more about their cities and their people's need than bureaucrats in Washington. So it proves that we can develop programs that are free of strings and free of paperwork, and that can be of great benefit to the city.

Now I did mention some regulations that we wouldn't do without. FDIC rules, for instance. You've mentioned regulations that obviously need correction. They are simply not designed in a way that is most efficient and effective. Can you think of any regulations that are effective, that have been of benefit to you, and that you would not do without. I don't want the feeling that we're just going to sweep everything aside, because there are many important functions of Government. What we're going after is unnecessary, burdensome, and costly regulation that does no earthly good whatsoever—just costs us money. Are there some regulations that you can think of that are useful and helpful and we don't intend to abolish?

Mr. NUESSEN. Sure there is a need for some Federal regulation. There is no doubt about that, certainly. What I really referenced as being cumbersome and costly are those that are really providing duplication services from the State and Federal departments. Certainly there is a need for environmental impact statements to address certain problems as they relate to the environment and to the particular project.

But I think the pendulum has swung too far to the side of wanting to find out everything about everything and giving many of the more miniscule considerations too much emphasis so we're really concerned about the duplication of different Federal regulations.

Senator PERCY. Are there other ways, Mr. Mayor that you think that the Federal Government and George Bush's task force for the President can work with the mayors in pinpointing regulations that are unneeded and unnecessary, some mechanism that I can recommend to Vice President Bush that he work with the mayors, some suggestions that you might have in that regard?

Mr. NUESSEN. Well, I have maybe two observations in that area. There are two observations that really represent the cities and municipalities. One is the National League of Cities. The other is the U.S. Conference of Mayors. The city of Quincy belongs to both of them. I think that mayors and councilmen and other city officials who are really on the front lines of the government in this country can make very meaningful suggestions and observations to your subcommittee and to the administration about how Federal regulations affect the governing of municipalities and how they might better be applied. So I would encourage you and others to set up a conduit of some sort with either one, or possibly both, of those two organizations in order to get an exchange of information from the Federal Government and those of us who consider ourselves to be at the front line on those kinds of things. I thank you for the opportunity to make that suggestion.

Senator PERCY. Well, we thank you very much indeed for making it. We certainly will follow up on that. I want to thank you for your appearance here, Mayor Nuessen, to start this hearing off. This is the first city in the United States where we've had a regulatory reform hearing, and you're the first mayor officially to have testified, and I thank you very much indeed for your presence and your hospitality also for the city of Quincy.

Mr. NUESSEN. We thank you for the distinction of being present in the city of Quincy.

Senator PERCY. Thank you. Our first panel this morning will consist of: Theodore Tetzlaff, vice president for law and external affairs, Cummins Engine Co. of Columbus, Ind.; Mr. Ken Smelcer, president of the Industrial Association of Quincy; Mr. Lonnie Johns, chairman of the Federal Government Committee, Jacksonville Chamber of Commerce; Mr. Jerry Eldridge, owner and operator, Q-City Roadrunner, Quincy; and Mr. Art O'Connor, vice president and general manager of Singer Corp. in Red Bud.

Please step forward, gentlemen.

I want to thank all of you for being here today. As representatives of the business community in Quincy and the State of Illinois, your testimony is crucial to our efforts to cut Federal regulation and redtape. I assure you that your voices will be heard in Washington.

Mr. Tetzlaff, I understand you have a plane to catch, so I invite you to give your testimony first. I am delighted to have a representative of Cummins Engine Co. here today. Just last year, Mayor Nuessen, Congressman Findley, and I were able to announce an urban development action grant from the U.S. Department of Housing and Urban Development which made it possible for Cummins to locate a major plant in Quincy. We are all very pleased that Cummins chose Adams County for its new facility. I have no doubts, Mr. Tetzlaff, that you will find the workers, local governments, and civic organizations in western Illinois will live up to the high expectations your company has for them.

Perhaps you know, I guess it was 4 years ago, I first wrote my friend, Irwin Miller, chairman of the executive and finance committee at Cummins, and told him about the availability of a plant that another long lifetime friend of mine, Bob Galvin of Motorola, had regretfully left vacant here in Quincy after Motorola went out of the television business. He thoughtfully acknowledged that letter, saying they had no need for that plant then, but they certainly looked into it once they had developed a need, we are very grateful indeed that they selected Quincy.

I mentioned originally there would be no finer place you could be, and I trust that you found that the case and will continue to find it so.

I have, by the way, asked our witnesses if they could summarize their testimony because the entire text will be incorporated in the written record of the hearing, but just so that we can get to questions. If each of these can be summarized in 5 minutes, it would be appreciated.

TESTIMONY OF THEODORE TETZLAFF, VICE PRESIDENT FOR LAW AND EXTERNAL AFFAIRS, CUMMINS ENGINE CO., COLUMBUS, IND.; KEN SMELCER, PRESIDENT, INDUSTRIAL ASSOCIATION OF QUINCY; LONNIE JOHNS, CHAIRMAN, FEDERAL GOVERNMENT COMMITTEE, JACKSONVILLE CHAMBER OF COMMERCE; JERRY ELDRIDGE, OWNER AND OPERATOR, Q-CITY ROADRUNNER, QUINCY, ILL.; AND ART O'CONNOR, VICE PRESIDENT AND GENERAL MANAGER, SINGER CORP., RED BUD, ILL.

Mr. TETZLAFF. Thank you, Senator Percy. We do well remember your efforts in mentioning Quincy to Mr. Miller and our company, and we certainly also appreciated both your efforts and those of your staff in bringing us together to the point where we were ultimately able to make the decision to locate a plant here. We'd also like to express our appreciation to Governor Thompson, and to Mayor Neussen, and to Representative Findley who were very helpful to us as we worked our way through this process.

As you know, Cummins is the world's largest independent manufacturer of diesel engines. We are based in Columbus, Ind. We have plants and offices throughout the United States and in many foreign countries. The plant here in Quincy is one of our newest plants. We will be primarily manufacturing components for our new 10-liter engine. We hope employment here will exceed 1,000 persons within a decade.

We appreciate the invitation today to testify before your subcommittee about Federal regulations that create unnecessary or excessive compliance burdens. Our statement does exceed the limit set for testimony, so we will summarize it.

In our summary I will focus primarily on those concerns that we have that relate to the product we make, not to the general EPA and other requirements and regulations that relate to industry generally, but there are a number that bear down particularly heavily on our particular product, which is diesel engines for heavy-duty trucks in the U.S. on-highway market. The regulations that affect these engines are each costly and complex. Cumulatively, they would impose, we believe, unjustifiable financial burdens on our existing production and threaten to halt new product development and innovation. We have no assurances that these regulations will contribute to improved public health.

We believe that protection of public health is and should continue to be the primary rationale for regulating emissions for heavy-duty engines. Our concerns lie in two areas. First, explicit application of health-based reasoning to the process for regulating emissions, and, second, the quality and workability of existing and pending regulations, and the regulator's understanding of our industry and the process by which heavy-duty diesel engines are manufactured and used.

We respectfully submit that both of these concerns can and should be addressed within the framework of the existing Clean Air Act through modifications which clarify and reaffirm Congress commitments to health-based standards and which limit certain administrative options in the enforcement of the act.

Unfortunately, the health-based standard setting process has not been followed in setting new heavy-duty emission standards and regulations scheduled to take effect in 1984. Rather, the Environmental Protection Agency has chosen to establish standards based on straightforward percent reductions over baseline emissions.

A serious consequence of this situation is that new regulations have been imposed on the heavy-duty engine manufacturer without any assurances that conformity will contribute to improved public health.

Accordingly, we urge retraining and strengthening the health-based standard-setting process sections in section 202(a)(3)—the so-called heavy-duty section of the Clean Air Act.

In 1979 the Environmental Protection Agency proposed a change in the method for the measurement and test of emissions from heavy-duty engines. The proposed new method was called the transient test. Since at the time of the hearing there was only one transient test facility in the United States, data necessary to assess the technological feasibility of the proposed standards as measured on the new test were inadequate.

In concept, the transient test—and I add at this point that last week when we testified before Senator Stafford's Committee on the Environment, we were joined by Caterpillar Tractor Co., also a constituent of yours, having the same concerns about this test—was supposedly an improvement over the existing 13-mode steady-state test for measuring emissions from heavy-duty engines in urban areas. But manufacturers then questioned the test itself, and its representativeness, validity, workability, and cost-effectiveness. The EPA transient test is costly, complex and still not completely developed. Industry and EPA are still trying to quantify the test's complexities and understand its inherent variabilities. Its feasibility and workability are not yet established, over 2 years after it was first proposed.

In addition to this, since February 1979, the 13-mode steady-state test for diesels has been under consideration by the nations of Western Europe in an effort under the General Agreement on Tariffs and Trade, or G.A.T.T., to harmonize their environmental laws and regulations with those of the United States. EPA's decision now to require its transient test may well be a violation of GATT. Moreover, unless the transient test requirement is rescinded, U.S. manufacturers may be forced to develop both the transient and the 13-mode test in order to be able to certify engines, not only for delivery here, but in Europe.

We recommend amendments to the Clean Air Act which direct the EPA to rescind the transient test requirement, to allow certification on the 13-mode test to an HC [hydrocarbon] standard comparable to the one on the transient standard, to determine whether a transient test is, in fact, justified, and, if so, to develop and validate it before imposing it on us.

Now EPA has issued two regulations effective as of 1984, and reproposed a third one, which together could jeopardize our current business and threaten to halt the introduction of our new products. In our view, none of these three regulations are required by the Clean Air Act.

The first regulation redefines useful life from the current 100,000 miles, which is also the period of our commercial warranty, to the actual life, which is equal to the average period to engine rebuild or replacement. In effect, the new definition of useful life will tend to result in a de facto extension of the commercial warranty to the point where half the engine population will have undergone major repair, independent of any emissions-related issues.

We project an approximate additional annual warranty cost on our current products of $230 million—3½ times our current costs—which will add about 20 percent to the current cost of an engine.

New product introduction would also be hindered by the significant increase in warranty costs resulting from this new useful life definition, and by the added uncertainty arising from the inability to estimate these costs accurately beforehand.

The second regulation we're concerned about is a proposal for durability testing. The purpose of this test is to measure the extent to which the emissions control technology of each family of heavy-duty diesel engines deteriorates during its useful life. This measure of deterioration would be used to adjust certification and production audit data to determine whether the standards were being met.

But because of the new useful life definition, the proposed durability test would take between 2 and 3 years to develop for our current engines. If a manufacturer were to produce and market certified engines before the durability test was completed, the data from the test could at any time during the 2- to 3-year period result in revocation of the certification and recall of all engines produced and marketed thereunder. The financial consequences of recall and production-interruption are so great that manufacturers, we believe, will be forced to postpone product introduction until the durability testing is, in fact, completed. This would affect both new engine development as well as improvements in existing engines, especially where required to meet new emissions standards.

The cumulative effect of the new useful life definition upon warranty costs and durability testing, and of the proposed durability test for market planning would tend to jeopardize existing production and halt product improvement or new product development.

The third regulation—the selective enforcement audit, or the S.E.A., at a 10-percent acceptable quality level requires 90 percent of engines actually produced to meet the standards. An S.E.A. at a 10-percent A.Q.L., as they call it, exacerbates the effects of the preceding two regulations.

The purpose of these costly and complex regulations is to insure compliance with emissions standards by in-use engines. But the regulations will not achieve this goal.

The effect and design of the regulations themselves indicates that the EPA may not well enough understand the integration of manufacturers and users in the heavy-duty engine industry. These rules would require manufacturer responsibility for the integrity of heavy-duty engine emission controls during a time when the manufacturer has no control over the engine. What is, in fact, required is a balancing of responsibility between manufacturer and user.

Imposing all the burden for compliance on the manufacturer, as would these three regulations, would be enormously costly, and we submit ineffective and inequitable. We recommend consideration of revisions to the Clean Air Act which provide a definition of useful life for emissions control purposes as coterminous with the commercial warranty set by the manufacturer, but in no event greater than the half-life of the engine. Second, a prohibition of in-use durability testing as now proposed by EPA pending completion by EPA and industry of studies to determine the real need for and alternative to that durability test. And, third, if a production audit requirement is to be retained, a 40-percent acceptable quality level for each certification family should be established, as is now the rule for automobiles.

We appreciate the opportunity to appear before your subcommittee to express our concerns. We believe that these concerns should be addressed by legislative amendments to the Clean Air Act, which would then reaffirm Congress' commitment to the public health standards and limit at the same time possibilities for administrative excess based on a misunderstanding of our industry and the use of our product.

Senator **Percy**. Thank you very much, Mr. Tetzlaff.

Mr. Smelcer, as president of the Industrial Association of Quincy, we welcome you and appreciate the way you have worked very closely with the Quincy Chamber of Commerce to address the problem of Government regulation and help make these hearings possible. Please proceed.

Mr. SMELCER. Thank you for the opportunity to be here. I appreciate it. The Industrial Association of Quincy represents approximately 50 manufacturing companies and associated businesses in the Quincy area, companies both large, small, privately owned, those of large stock companies that have headquarters in other parts of the country.

Our concern is those problems that face the manufacturers, and that's what we want to address. Many of these problems, of course, are directly related to the Government regulations, interpretation of the regulations which may be different than what Congress intended, and the lack of coordination between the agencies. Many of the things that have been passed have Catch-22 circumstances.

Following are some examples. Paint used in our manufacturing operations are usually of a solvent base. The EPA clean air people say that these solvents could possibly be harmful to the employees so we need to stop using these paints. That leaves us with the option of a water base paint, which is not too satisfactory in many cases, but it also leaves us with a Catch-22. What do you do with the paint sludge that remains from this type of paint.

The solvent based paint has normally been put into landfill and so on. With a water base paint, you have leaching, and the landfill requirements are such that they prohibit you from dumping it in the landfill, so we're caught in the middle. If we use the solvent, we're wrong. We would be in violation of the clean air part of the law. If we do it the other way, we have no place to put the paint sludge. The paint sludge is really not that hazardous of a material. In fact, our feeling is that it should be reclassified as such or rather completely nonhazardous.

Another example is the things we run into are in a personnel department with your employment applications. We are not allowed to put anything on the application to describe much about the person, yet the Government requires you, especially if you're charged, to come up with all the data on these people that supposedly came and applied for a job. Again, you're damned if you do, and you're damned if you don't.

To go back to another thing that we have as a problem here in Illinois, relating back to the paint sludge again, and that is that the State of Illinois many times has taken on itself to make tighter criteria and regulations than the Federal Government. The Federal Government sets one standard and Illinois a tighter one. I'm afraid Illinois is in competition with New York and California as to who can set tighter standards.

In the area of the paint sludges and so on and where we might dump these residues, under Illinois laws we can't use our own local landfill. The sludges are now being sent many miles away, but locally we could accept them. They're not the kind of a thing that would do harm. This is the kind of situation that is costing us a lot of money. There are several problems that we run into with the agencies such as this.

For example, the city of Quincy does not, and the industries around here do not have a hazard waste as a problem. We just don't have that kind of industries here. But, nevertheless, because the way the regulations have been written, we have been faced with many problems as if we do. We testified over 2 years ago, about hazardous waste regulations in front of the EPA in St. Louis.

Unanimously, across the country people said you've got to classify these wastes by degrees: paint sludges, ashes that we put on our roads, this sort of thing, should not be classified the same as nuclear residue. But under the regulations as worked out by the EPA on this, you either are or you aren't. An orange is considered just as hazardous as a pound of radioactive material. It's considered exactly the same because there is no classification or degree.

Again, what I'm saying is that at the hearings they pay no attention to us. We know the regulatory agencies are not listening, because in that particular case everyone said don't do it that way. It doesn't make any sense. They did it anyway. In fact, I was told by one of the officials that they had already made up their minds before the hearings were held.

What some of the things that this has led to, the paperwork, the problems we've had, and so on, is ignoring the law. I wouldn't like to convey the impression that we're all a bunch of lawbreakers, but if you're a small businessman, and you're swamped with all the forms that come in, what do you do? Basically what you do is you put it in the round file until such time as they come with the handcuffs and tell you they're going to put you in jail if you don't fill them out. We know that many of these forms are not used and it is expensive to take the time to fill out.

So the practical matter for many of the companies is they're not filled out. We're not talking about regulations that mean something. We're talking about useless paperwork kind of things. There are many more specific things that we could talk about here, and we are willing to sit down with anyone, if you wish, to talk about specifics as to which regulations are quite bad. That, of course, would take many hours because you are talking about engineers, personnel departments and almost every department in a company who run into these regulations.

We would also, as a last note, like to mention something that the mayor mentioned. We are faced with many local problems such as sewer regulations and water regulations that affect us locally that come down from EPA. For example, we had a recent one which does turn out to be Illinois, but the proposed regulation on waste water dumping—the specifications were so tight that many times the water coming straight out of the drinking water tap would not meet the regulations to be dumped into the creek.

That is the kind of ridiculousness that we run into. Again, it wouldn't be so bad if we felt that these agencies listened when you said something, but most times they don't pay attention.

Senator **Percy**. Thank you very much indeed, Mr. Smelcer.

Lonnie Johns is chairman of the Federal Government Committee of the Jacksonville Chamber of Commerce. We welcome you. You've been on both sides of the Potomac. You have worked in the Federal Government in Washington, D.C., so you know how things look from that side of the Potomac River. The town of Jacksonville is very fortunate to have a person with your background working for the local chamber. You're representing, I know, a great many members of the Jacksonville community that has shown such a keen interest in these hearings, and we very much appreciate your presence here today.

Mr. JOHNS. Thank you, Senator. My name is Lonnie Johns, and I appear before this subcommittee representing the Jacksonville Chamber of Commerce. All of us are concerned about excess Federal regulation which is sometimes overlapping and contradictory, sometimes costly and unproductive, and always generative, if nothing else, of piles of paperwork.

Today we wish to discuss a problem that affects this city, Quincy, and all of west-central Illinois; scheduled bus service and the Interstate Commerce Commission. What happens when a company holding monopoly authority decides to quit serving the public? In this case, before the Interstate Commerce Commission, nothing.

Jacksonville Bus Line Co. holds sole authority to run scheduled buses from Quincy and Hannibal, Mo. In 1972 this company was sold to Everist Transportation in Springfield. Since this time there has been a systematic reduction of service. In 1972 you could leave Quincy twice a day to go to Springfield; now a bus runs once a week. You could go from Peoria to St. Louis twice a day; now this bus, although scheduled once a week, usually does not run at all.

The public can stay in St. Louis 30 minutes or stay 1 week, go from Quincy to Springfield for 20 minutes or stay 7 days, visit Peoria for 50 minutes or remain there until the next bus 1 week later.

In a letter to the Commerce Commission, State Representative Jim Reilly says:

> It appears to many of us that a consistent effort has been made to phase out scheduled service by downgrading that service to the point where no one wants to ride. Schedules are changed frequently and inconveniently with no real effort to acquaint riders with the details.

The bus company moved the Jacksonville bus depot five times in 4 years with no notice to the public; had no printed schedule available for distribution to the public; for 5 years you could not get a piece of paper that said when the bus ran; used a bus that was not air-conditioned in summer and not adequately heated in winter; a bus that several times had to be started by the passengers getting off and pushing it. The company was in violation of almost every standard for adequate service as adopted in 1977 by the Interstate Commerce Commission.

Did the Commission take action? Yes; but their only action was to give the busline brand new additional authority for expanded charter operations rewarding them for their good behavior.

On June 22, 1977, the Jacksonville Chamber of Commerce requested the Interstate Commerce Commission to postpone the granting of new charter rights to Jacksonville Bus Line Co.

The ICC replied:

> This authority would neither authorize discontinuance of nor have any effect upon existing regular route service.

In July 1977 the chamber filed a motion to act on the previous request for postponement stating:

> As we feared, Jacksonville Bus Line Co. immediately filed to further reduce their service by 66 percent. This certainly is not in the public interest, and confirms our expressed concern.

In September 1977, only 3 months later, which is relatively fast for the Interstate Commerce Commission, they had made an investigation of the busline, and that the Chicago office would "inform you of the handling of this matter by the Bureau of Investigations and Enforcement." Several further requests received the response that the investigation was in progress. Finally, late last year I was told informally that the investigation just petered out.

The basic problem is the monopoly authority held by the busline, the lack of any competition whatsoever, and the inability of new firms to get authority. As stated in a report of the U.S. Department of Transportation dated January 1980, and this is a quote:

> The regulatory process itself appears to have been the principal barrier to entry. Virtually all applications for authority for a new carrier to operate where another already provides service, are protested by the existing carrier, setting in motion a cumbersome, time-consuming and expensive set of regulatory procedures to determine whether the new service is required to meet the public convenience and necessity. Several years and thousands of dollars in legal and other costs may be involved before such an application is finally resolved. In sum, new entrants, along with the fresh and innovative ideas they typically bring to an industry, have been discouraged.

In August 1980, the Jacksonville Chamber formed a task force for adequate bus service, which I chair, to attempt to remedy this situation. After receiving over 200 written complaints about the lack of bus service, after holding a public hearing on the problem, we finally got some action from ICC, only with the help of Congressman Paul Findley and Senator Charles Percy.

I'd like to take a moment, Senator, to thank you and your staff for the assistance you have provided in this matter.

In November 1980, ICC issued a warning letter to Jacksonville Bus Lines stating:

> You are reminded that the granting of your application for charter service was in part based on the condition that such grant would not have any effect on your duty to provide a reasonably continuous and adequate service. It appears that Jacksonville Bus Lines has curtailed such service in favor of charter operations. Federal regulations provide procedures for making changes in service responsibilities. Your firm appears to have totally ignored such procedures.

Of course this was the chamber's exact position in 1977. The ICC for some reason came to realize it in 1980. I'd like to read a small part of this warning letter which is attached to my testimony. This is a letter addressed to Everist from the Chicago office of the Illinois Interstate Commerce Commission.

> A call to your Jacksonville depot on November 6, 1980, revealed that your depot manager stated there was no Peoria-St. Louis service and that Jacksonville Bus Lines did not have authority to perform such service. During a call later the same day to your office, a Carol Vinson stated that your firm did have the authority and that a run was made once a week, every Thursday, although she could not give the arrival and departure times because the schedules were being revised. In your call later the same day you stated that Jacksonville Bus Lines did provide Peoria-St. Louis service but on a fragmented basis, that is, Peoria to Jacksonville on a particular day, then Jacksonville to St. Louis a day or two later.

If this is what the ICC is told in a couple phone calls, you can imagine how difficult it is for the public needing a bus schedule.

This has been the total extent of ICC action. The busline has made no changes in schedule, and the situation is now complicated by a sale of the assets of the busline to Horizon Charter Coaches, which has no authority to run scheduled buses.

What action can be taken to improve this regulatory impasse: the complete deregulation of the bus industry, except for safety regulations.

There are now bills before the Congress to change the ICC's control of intercity buses. The proposal of the American Bus Association entitled "Bus Regulatory Modernization and Improvement Act of 1981" is completely unacceptable. It would allow a new busline to enter a market only if they did not impair the operations of existing carriers. The very basis of new entry is new competition, and that may mean if the old company can't compete its operation may well be impaired.

We greatly appreciate this opportunity to appear before this subcommittee, and I would hope to offer you additional information on the need for bus deregulation. This is a problem that affects the general public and business firms that need to ship small packages, parts, et cetera. We hope you are able to assist us. Thank you.

Senator PERCY. Thank you, Mr. Johns. The inconsistencies that you pointed out are certainly apparent in many of our Federal policies. The Department of Health and Human Services is constantly admonishing people not to smoke so much and trying to improve human health around the world, and yet the Department of Agriculture, a couple blocks away, is subsidizing tobacco prices and building up surpluses, and then spending millions of dollars advertising to encourage people abroad to smoke so they will buy American tobacco.

And when you mention deregulation in the busing industry, it reminds me of the battles we had with the airline industry when 25 of 28 airlines fought us on deregulation. And, of course, the trucking industry has long resisted any form of deregulation. Get rid of all the paperwork and deregulate everyone but us. We're different. They like the uniformity of vote stability. They like the fact that there is not that competition.

I was raised in a business where without competition a yellow box haunted me every night. It's been 25 years ago, and thats' all we want is competition. That's what we're for, but I'm glad to hear your comments.

Mr. Eldridge, we welcome you very much.

Yes?

Mr. TETZLAFF. Senator, I'm terribly concerned unless I leave I might miss my bus.

Senator PERCY. I don't know whether you're for busing or not, but we're for your making whatever connection you have to. Thank you very much indeed for being with us. And, incidentally, I'm a stockholder of your company, too. Thank you.

Mr. Eldridge, you made one remark in your testimony that I want to comment on, the request for 55 copies. This is a request, not a command. Some provided them and some didn't. We have found in hearings, certainly in Washington, we do get a demand for testimony instantaneously. In order to save the Government money we just figure it's better to have all those who come in and testify give us adequate copies so we don't have to make copies and charge the taxpayer for them, but there was no command that you do so at all. You were free to do it or not.

I think you will find a lot of people are interested in your testimony. You typify in a sense the frustrations of small business. You're testifying with some giants today, but certainly I know that you're a real entrepreneur—the owner, the operator, the driver, the fare collector, the mechanic, and the form-filler-outer for a one-man charter bus company located right here in Quincy, and your Q-City Roadrunner Bus Co. provides a very important public service.

But I think people ought to have a chance to sit behind your desk now and see how you see Government regulation as it affects your job. I'd only say the job of Government ought to be to make life easier for people like you. You're what makes this country tick. You're the real entrepreneur, and we should work harder to have you stay in business rather than make it more difficult, so your testimony is extraordinarily valuable.

Mr. ELDRIDGE. Thank you, Mr. Senator. I appreciate Mr. Johns frustration with the Interstate Commerce Commission. I feel that daily.

In dealing with Government bureaucracies, the hardest hit by regulations and reports, I believe, is the small business. They are required to abide by almost as many rules as the major industries, report the same information and comply with the same standards. At the same time, their staff structures are much smaller, in my case one, and their operating capital is very limited, and I can testify to that, and it's placing a greater stress on us rather than on the larger firms. To correct this, I think an examination of all regulations is in order, and I think this subcommittee should be commended for taking this gigantic step. I really hope to see some results.

Being in the transportation business, I feel the Government regulating monster more often than a lot of people. Many of these rules are to the benefit of the general public, and all of them were instituted for that goal; however, in the course of time some of these rules have been twisted by either the Government or private industry itself, as Mr. Johns pointed out, and there is a detrimental effect now on the consumers.

On January 6, 1981, our firm was contacted by Quincy College to transport their men's varsity basketball team to Kirksville, Mo., for a game. Our bus is parked less than 1 mile from Quincy College. Our rate, at that time, was $196 for the roundtrip cost. Due to the ICC regulations governing interstate commercial transport, we were unable to accept this contract. According to the rules, a bus had to be brought from Springfield, Ill., empty, which is 100 miles away, pick up the players, take them 70 miles to Kirksville, return them to Quincy, and then return again with an empty bus to Springfield. The only other alternative was to proceed with the same process, only this time bringing the bus from St. Louis, Mo., 130 miles away, adding tremendously to the cost for Quincy College, plus the waste of at least 35 to 50 gallons of fuel.

The results of regulation over charter buses is higher prices, reduced service, and wasted fuel. Illinois deregulated buses several years ago. This deregulation resulted in not less service, but more companies to service the needs of the public plus lower rates within the State.

The ICC will argue that one needs only to apply for authority and it will be granted. We incidentally were extremely hardly protested by the Jacksonville Bus Co. and have been since we entered our application. Our application was committed on October 15, 1979, and was not granted and approved until April 29, 1981. We still don't have the certificates. This is a long time to wait for a community whose closest charter bus with the authority is 100 miles away.

Needless to say, this hits the hardest to those you want to hurt the least—the elderly and the young students.

With deregulation of airplanes we freed the mail. With deregulation of trucks we freed livestock. When will the Government get around to freeing people who want to travel?

Another irritating regulation that started to save fuel has proven to waste the same, and I'm talking about the stupid and ridiculous 55-mile-per-hour speed limit. At 65 miles per hour my bus will average 9 miles per gallon. At 55 miles per hour it averages 7 miles per gallon. Of course, this is because it was geared to run at 65 when built. I imagine the new buses are geared to run a little bit higher. It also consumes less fuel on hills and so forth.

I think that we made a very good case on that, and I know the trucking industry has made a very good case on the fact that 55 miles an hour wastes fuel and doesn't save it. Senator, I'm going to separate from my text here because the ICC says that we can provide service through temporary applications. One time—I'll give you an example. In August last year the Illinois Veteran's Home called our company and wanted to take a trip to the St. Louis baseball game, which this year is impossible, but they were going to do it last year, but cannot get a bus. They could not get one from the Jacksonville Bus Co., and they couldn't get one from Continental Trailways. Those are the only two certificated carriers in Adams County. So they called me.

Now under the existing rules I can take them if they can't get transportation from an existing certificated carrier, but, I still have to fill out the papers. So I called the Chicago office of the ICC, the game was 2 weeks away, I asked them to send me the temporary application; 3 days later, or 4 days later, I hadn't got it, so I called them back again. They said they would get it in the mail. I received the application 2 days after returning from St. Louis.

Now there is no reason and no call for that. If they're going to make their own rules, they ought to at least cooperate with their own rule. One other time I wrote to ask an interpretation from Robert Terkington who is in charge of all interpretation for the Interstate Commerce Commission, and I asked him if I could leave the State of Illinois with a nonexempt group and return to the State of Illinois without letting off any passengers. In other words, just to go to Granite City is where I was going, and the closest route, if you look at a geographic map, is through Missouri. So I asked if this would be within the law. It took 9 weeks to get an answer that it was within the law. So I have to waste fuel, go extra miles to get to Granite City, or to East St. Louis, or to wherever I have to stay within the State of Illinois.

Now the only nonexempt groups according to the regulations are high school age and below. In other words, I can take kids anywhere in the country, but I can't take adults. Now the people who need the break the worst on money are not institutions with money. They're the senior citizens who do the traveling. So right now there are only two certificated carriers in the city of Quincy, the county of Adams, and one—I'm not going to comment on their service. I think that's already been commented upon. But I do know that there is one particular company that makes it very difficult for anyone else to get into the business. I have spent over $5,000 in legal fees up to this point to try to get a simple certificate to operate my bus company out of Adams County almost 2 years in the making.

Now I understand it's been granted, but they haven't told me that yet. I got that through Congressman Findley. I know that you have worked in my behalf, Senator, on one occasion or two. Congressman Findley has given countless hours to this problem, and it seems to me that whenever an agency regulates the transportation industry and the way they're doing it, they are merely monopolizing the market and ruining the franchise business. I feel the Government should not be in the franchising business at all. They should regulate to the point where we are required to provide our services, but they shouldn't regulate to the point where nobody else can get into the industry.

I welcome someone else to buy a bus and go in business here. It's going to make business better. I'm going to compete with them. I cannot compete against a company who has sole authority operating. It's ridiculous. But, anyway, I assume that my authority will come through very shortly. I'm not worried about that. But, then, now, on the inside looking out, I still feel that deregulation of busses is the only way to go to provide services for transportation of people.

In closing, Senator, one other thing that does have nothing to do with regulation, but I've always wanted to tell either you or Congressman Findley this, sometime disguise yourself and call a Government agency on the phone, don't tell them who you are, and just ask a simple question and see what kind of rigmarole you have to go through to get the answer. It's really ridiculous.

I spent as much as 40 minutes to Washington on a phone call to the ICC and asked a simple question. I called 2 weeks ago to find out the address direct in Wyoming to get a fuel permit. They referred me to the Illinois Department of Transportation, and the Illinois Department of Transportation referred me to Quincy Chamber of Commerce. I don't think the Quincy Chamber of Commerce has the address for a fuel permit in Cheyenne, Wyo., but that's where I was referred. I want to thank the members of this subcommittee and you, Senator Percy, for hearing a very small businessman tell of his problems.

Senator PERCY. Well, I think your testimony has been invaluable. I can assure you the best market research department I have is Lorraine Percy. She's here in Quincy with me. She refuses to identify herself as the wife of a Senator when she calls the Federal Government. She just doesn't think it's right. And the tales I get at night, the runaround that she gets. And I say, well, just use your Senator's office, or call your Congressman, John Porter then, if you don't want to call me, and we'll try to break through.

But a tremendous amount of my time and my staff's time in Springfield and in Carbondale—we're now opening a new office—is to just break through the redtape, for veterans, for social security recipients, black lung disease, whatever it may be, it's unbelievable what you run up against. So I'm not protected from it or immune from it. I can't fail to disclose my identity when I call, but Lorraine really gives me the business when I get home. I thank you very much indeed, and, as I have said here, your testimony, which I read, is of tremendous interest. I think it will be very, very valuable to this panel.

Now our final witness is Mr. Art O'Connor, vice president and general manager of Singer Corp., a company well known in the heating and air-conditioning equipment field. I know that you've been working with energy regulation, a subject of tremendous interest to me, and we're looking forward to hearing from you, Mr. O'Connor. I apprecite you coming in from St. Louis.

Mr. O'CONNOR. Thank you very much, Senator. The Singer Co. manufactures residential and commercial heating and air-conditioning equipment at three locations in the United States, one of which is in Red Bud, Ill.

Our 600 employees produce approximately $60 million a year of heating and air-conditioning equipment.

Most central residential products are designated as covered products under section 322 of the Energy Policy and Conservation Act. As such, they have become subject to the regulatory program for appliance efficiency of the U.S. Department of Energy and the Federal Trade Commission.

The regulatory program has three sections: Section 323, product testing; section 324, product labeling; section 325, minimum efficiency standards.

For over 20 years, the air-conditioning industry has, through its industry trade association, Air-Conditioning and Refrigeration Institute, A.R.I., conducted a program of certification of manufacturers' equipment ratings.

These certified ratings are published semiannually by A.R.I. in a widely used Directory of Certified Ratings.

The Department of Energy felt the industry's measure of energy efficiency ratio, E.E.R., was unrepresentative of the way the equipment would perform in actual use.

The Department of Energy then established and promulgated in November 1977 an arbitrary test procedure to determine what it called SEER, S-E-E-R, seasonal energy efficiency ratio, and then required that this be used as the measure of energy efficiency in lieu of E.E.R. after January 1978.

S.E.E.R. has turned out to be an absolute disaster for the following reasons: One, S.E.E.R. is unrepresentative. No one really knows whether S.E.E.R. is an accurate measure for determining seasonal energy consumption or not because there has been no formal study to determine this by the Government, industry, or anyone else.

Two, S.E.E.R. is exorbitantly costly. The simple E.E.R. test requires about 8 hours to run in a suitably equipped testroom. To determine S.E.E.R. requires three additional tests which add 24 hours to the procedure.

To establish and verify ratings for the A.R.I. certification program testing costs averaging $53,000 per year. The additional volume of testing required by these Department of Energy procedures costs $445,000 per year, and, for Singer it required a new capital investment of $1 million for testing facilities.

It would be one thing if this testing cost were to produce a representative S.E.E.R. that was significantly different from the simpler E.E.R. it supplanted. But it is an enormous price to pay for an unrepresentative S.E.E.R. that is only 5 percent different from an E.E.R.

Three, S.E.E.R. is unfair. The testing requirements cited above fall equally on large and small manufacturers. Singer is small in our industry. The Department of Energy recognized that this would prove disproportionately burdensome to a small manufacturer and thus provided for the alternate use of certain calculation factors for certain statistical procedures.

However, the S.E.E.R. that can be claimed by the alternate calculation methods can easily be 10 percent less favorable than that which can be claimed by running the full course, thus putting the small manufacturer at a 10-percent disadvantage and perhaps not able to meet minimum standards.

Four, S.E.E.R. is counterproductive. The legislative/regulatory effect has clearly forced some degree of reallocation of each manufacturer's resources away from new product development in favor of S.E.E.R. and in favor of statistical criteria testing.

The irony of S.E.E.R. is it is by no means certain that today's high efficiency air-conditioners will save energy. They generally do a less effective job of humidity removal, and typical users will compensate for this by lowering the thermostat setting, thus using more energy to cool to the lower temperature at which, hopefully, humidity conditions will be improved so they can have comfortable air-conditioning.

Labeling, section 324, is a program to be undertaken by the Federal Trade Commission based on Department of Energy tests for S.E.E.R. The final rule has not yet been promulgated for central air-conditioning.

Due to the way heating and air-conditioning units go to market, labeling will have little or no impact on the buyer. These products are contractor purchased and installed and there is little opportunity for comparison shopping, such as with refrigerators, washers, dryers, and other energy consuming appliances, which are sold in retail stores.

The opportunity for real comparison shopping is not available even though the product would be FTC-labeled.

Our principal concern is the so-called cost of operation chart.

We have already explained our serious reservations about the value and accuracy of S.E.E.R.

We have equally serious reservations about the number of operating hours shown in the Department of Energy chart on which the calculation is to be based. For this part of Illinois, for instance, the Department of Transportation charts require the use of 1,000 full-load hours of operation per season. This is equivalent to a 95 degree outdoor temperature 11 hours per day for 90 consecutive days; 1,000 hours, we submit, is substantially higher than the average Illinois user will use his air-conditioner.

Air-conditioning usage is so highly discretionary by the user as to the hours of operation, temperature setting, and conservation measures that operating cost can vary by a ratio of 5 to 1 from installation to installation.

Thus, the Department of Energy cost of operation data is inaccurate and misleading.

At this time the Department of Energy will not go forward with its minimum efficiency standards program, section 325.

It has not been viewed as cost effective and we heartily agree.

The industry and the buying public are responding to economic and marketplace forces which demand energy conservation.

Since 1975, air-conditioners with a S.E.E.R. of 8 or greater have risen from 22 percent of the industry's sales to 50 percent. Conversely, sales of units with a S.E.E.R. less than 7 have fallen from 19 percent to less than 7 percent.

In the event that minimum efficiency standards should be revived, we would like to comment to you at that time.

In conclusion, the Department of Energy has taken us through what has been an enormously costly and counterproductive process.

It has imposed actual operating costs on us as we have described.

Specifically we seek the elimination of S.E.E.R. in favor of E.E.R., the elimination of statistical criteria testing in favor of the go/no-go testing used by the A.R.I. certification program, the elimination of product labeling in favor of an A.R.I. directory, and, finally, the elimination of minimum appliance efficiency standards.

Through A.R.I., we will make specific proposals to Government. We pledge that our proposals will be responsible and that they will be advanced in the spirit of serving the country best. I want to thank you very much.

Senator PERCY. Thank you very much, Mr. O'Connor. To keep on schedule, we have just a few moments to ask a few brief questions. Do you feel that the Air-Conditioning and Refrigeration Institute Directory could be substituted for the energy efficiency ratings that are put on? Would that be adequate? Do people actually read those, are they familiar with the directory, and do you feel that price and the high cost of energy really is probably the best policer now of energy efficiency and will bring it about automatically as it has with, say, gasoline prices that have gone up?

Mr. O'CONNOR. You've asked two questions, I believe. The answer to the first one is if there was acceptance of the A.R.I. Standard Directory, which comes out every 6 months——

Senator PERCY. Yes.

Mr. O'CONNOR [continuing]. And if this was published and made readily available by the contractors and developers, the installers of air-conditioning equipment, there is no doubt in my mind that it would be more beneficial to the consumer than a label, because all they would have to do is open the volume to the particular size air-conditioning system that they were interested in and they would see every manufacturer's E.E.R. at a single glance.

With respect to your second question, I could not agree more, and the statistics begin to bear it out, that the buying public is energy conscious. They will go for the higher energy efficiency equipment, but I feel that it's unfair for the Federal Government to penalize someone, say, in the New England States, or Minnesota, or Michigan, or upper Michigan, where the air-conditioning requirement may be only 400 or 500 hours a year and say you must buy equipment at a premium price which is predicated on 1,000 or 1,500 hours usage a year.

Senator **Percy**. Thank you very much. Mr. Smelcer, I wonder if you could tell us, just as a ballpark estimate, what proportion of regulation an industry in Quincy has to deal with is Federal regulation and what proportion might be considered State and local? Do you have any idea?

Mr. **Smelcer**. In most cases, there is a duplication. Now, with OSHA that hasn't been, but EPA is the biggest duplicator right now, I think, of everything of that nature. Wage and hour, the same thing. Almost everything we run into we find that duplication, and we're not necessarily saying we would like to have the Federal Government handle it all, but, as the mayor said, I don't think we're interested in having two groups handle it, and that is a big problem. And, as I mentioned, where one group wants to increase on the standards.

There is a suggestion I'd like to make, which is not a new one, I'm sure to you, but Illinois has passed a law that stands something called JCOR, a joint committee on regulations. Both house and senate, Republicans and Democrats, sat on a committee to review the regulations. Now, it's somewhat gutted, and the executive branch is trying to negate it. But this says that if the regulations come out, seem to be arbitrary, this group can stop them for a certain length of time.

I would love to see that on the Federal level. That, for example, the question where I proposed before: Go, no/go on waste. That would have been great, because we could have then talked to you folks who handled the money for those people and they would have listened perhaps. But the way it is now we have no way to make them listen. Just——

Senator **Percy**. We're having, by the way, testimony by Senator Pres Bloom tomorrow on this very issue of JCOR, and we'll be relating it to whether there is any sense in the Federal Government doing that.

Mr. **Smelcer**. It certainly would be helpful, I think, to us because it would make them act more responsibly with some of the ridiculous things that they come out with.

Senator **Percy**. Fine. Thank you very much.

Mr. Eldridge and Mr. Johns, we have heard considerable complaint about how the Government forces business to comply with strict standards—strict design or engineering standards—when those businesses left to their own devices frequently come up with a more effective, less expensive way of accomplishing the same goal. Would it be better for the Federal Government to just simply say these are the goals that we need to target for but leave it to business to determine how best to get to those goals?

Mr. **Eldridge**. Well, Senator, I'm an advocate of free enterprise, and I always believe the less Government and the more business, the better things are, and a lot of people will argue that. I'm sure in some cases business cheats. I'm sure that business will cut corners to make profit. I'm sure the Government regulating arm has to be somewhere in the background to oversee. But if the Government would stop telling us how to do it, and, like you say, give us the goal. Personally I think it's ludicrous to tell me that I have to check my brakes every year or whatever. I'm the one driving the bus. I'm the first one to wreck, and I know my brakes are going to work, and, you know, these types of things are just to me absurd.

I'm sure there are companies that will allow their equipment to be not very well maintained. And there, again, the Government, somebody has to be there to say you have to do it. But I'm free enterprise. I think business will take care of itself if they're allowed to do it.

[Mr. Eldridge's response to a written question submitted by Senator Percy.]

RESPONSE OF MR. ELDRIDGE TO A WRITTEN QUESTION SUBMITTED BY SENATOR PERCY

Question. Mr. Eldridge, in reviewing your case I would like to know more about whether the ICC was guilty of bureaucratic negligence. Can you give me a rough estimate of the number of charter opportunities Q–City Roadrunner lost between the time you applied for authority and the time you received your permit? I would like to know how much this cost you.

Answer. It is extremely difficult to estimate the number of charter opportunities that escaped us in the last two years since many people just don't bother to call thinking we have no authority. Our competition capitalizes on this matter by rumoring that we are an "illegal company". I would feel this delay may have cost us between $30,000 and $50,000 in two years. It will take us an additional year or so to convince people that we have authority after it is received.

As far as negligence, I would only ask why after almost two years we still have not received authority when officials of the Commission will say that average time period is six months. We have found out why I was not notified of my decision. It seems the Commission did not record my change of address even though they were notified of it. My second application made note of this new address, yet all correspondence has been going to the old address and not being forwarded by the Post Office, thus, I didn't receive notification. Due to this error on the part of the Commission, my time of reply has elapsed and the decision could be voided and the entire two years of effort will be wiped out. If this happens, I hope you will help me.

On at least three occasions my original application was "lost" or "mislaid". Perhaps the employees of the Commission don't realize the importance of a company's entire future. Please understand that I have dealt with many helpful and interested people employed by the Commission. There sems to be, however, a very large number of people in their Commission who don't take their responsibilities very seriously. That in itself results in a definite hardship to private business interests.

Thank you for your interest in this very small company and I hope your subcommittee findings get the attention they deserve.

Senator PERCY. Mr. Johns.

Mr. JOHNS. We have discussed the two forms of the problem. One, excess regulation. It costs everyone in the country money—consumers, businesses, everyone. It's money out of everyone's pocket. And, two, regulation where the regulated companies themselves fight for continued regulation. They're protected from competition, and, therefore, the companies themselves, the unions involved, everyone involved, in that enterprise will fight for continued regulation.

I think we do need the kind of free enterprise that the gentleman has just spoke about. One that attacks regulation of both kinds. The second is the hardest because you have the companies themselves fighting for it, and we'd applaud any effort you can take in that area.

Senator PERCY. Thank you. Gentlemen, I want to thank you very much for your cooperation and help. We very much appreciate your presence here today.

[The prepared statements of Messrs. Tetzlaff, Smelcer, Johns, Eldridge, and O'Connor follow:]

PREPARED STATEMENT OF THEODORE R. TETZLAFF

I am Theodore R. Tetzlaff, Vice President for Law and External Affairs, Cummins Engine Company. Cummins, the world's largest independent manufacturer of diesel engines, is based in Columbus, Indiana. We have plants and offices throughout the United States and in many foreign countries. One of our newest plants is here in Quincy, Illinois, where we will be primarily manufacturing components for our new 10 litre engine and where we hope employment will exceed 1000 within a decade.

We appreciate your invitation to testify before The Subcommittee on Energy, Nuclear Proliferation and Government Processes of the Senate Committee on Governmental Affairs about federal regulations that create unnecessary or excessive compliance burdens. Our statement exceeds the seven minute length set for testimony, so we will summarize it and request that the whole statement appear in the hearing record.

Our testimony will focus on existing and pending EPA regulations which are scheduled to take effect in 1984 and are already affecting our current major product --- diesel engines for heavy-duty trucks in the U.S. on-highway market. These regulations are each costly and complex. Cumulatively, they would impose unjustifiable financial burdens on our existing production and threaten to halt new product development and innovation. Moreover, we have no assurance these regulations will contribute to improved public health.

We believe that protection of public health is and should continue to be the primary rationale for regulating emissions. Our concerns lie in two areas: (1) explicit application of health-based reasoning to the process for regulating emissions from heavy-duty engines and vehicles; and (2) the quality and workability of existing and pending regulations, and the regulator's understanding of our industry and the process by which heavy-duty diesel engines are manufactured and used.

We respectfully submit that both of these concerns can and should be addressed within the framework of the existing Clean Air Act through modifications which clarify and reaffirm Congress' commitments to health-based standards and which limit certain administrative options in the enforcement of the Act.

Health-Based Standard-Setting

Congress made firm its commitment to public health as a national goal when it enacted the Clean Air Act of 1970, and subsequent 1977 Amendments. With regard to heavy-duty diesel engines, the Act contains clear language to control emissions and improve air quality for reasons of public health. It provides a process to study the risks to public health of mobile source emissions, and to set standards and other regulations to ensure public health. In setting standards and regulations, the EPA is also required to consider other national goals, such as energy and cost effectiveness.

Unfortunately, the health-based standard setting process, which could result in standards more stringent as well as less stringent than current ones, has not been followed in setting new heavy-duty emission standards and regulations scheduled to take effect in 1984. Rather, EPA has chosen to establish standards based on percent-reductions over baseline emissions.

A serious consequence of this situation is that new regulations have been imposed on the heavy-duty engine manufacturer without assurance that conformity will contribute to improved public health.

Accordingly, we urge retaining and strengthening the health-based standard-setting process set forth in section 202(a)(3) -- the so-called heavy-duty section of the Act. Changes to this section should:

- Ensure that standards are based on continuous, independent fact-finding by an entity such as The Health Effects Institute;
- Expand the standard setting process to regulate simultaneously all pollutants according to the same criteria of technological feasibility, cost, trade-offs with other goals, and cost-effectiveness;
- Ensure independent review of EPA findings with regard to technological feasibility, and allow at any time temporary upward revision of standards that EPA finds are not technologically feasible.

- Require a minimum 4-year manufacturers' compliance leadtime from the date of issuance of EPA final standards.

Premature Regulation Without Adequate Data

In 1979 manufacturers were invited to assess the technological feasibility of EPA's proposed percent-reduction standards. Other proposed regulations, however, made that assessment nearly impossible.

EPA proposed a change in the method for the measurement and test of emissions from heavy-duty engines. The Clean Air Act did not mandate this change. The proposed new method was called the transient test. Since at the time of the hearing there was only one transient test facility in the country, data necessary to assess the technological feasibility of the proposed standards as measured on the new test were inadequate.

In concept, the transient test was supposedly an improvement over the existing 13-mode steady-state test for measuring emissions from heavy-duty diesel engines in urban areas. But manufacturers challenged EPA's proposed version of a transient test on grounds that it lacked representativeness, validity, workability, and cost-effectiveness. The EPA transient test is costly, complex and still not completely developed. Industry and EPA are still trying to quantify its complexities and understand its inherent variabilities. Its feasibility and workability are not yet established, over two years after it was first proposed.

In addition, since February, 1979, the 13-mode steady-state test for diesels has been under consideration by the nations of Western Europe in an effort under the General Agreement on Tariffs and Trade (GATT) to harmonize their environmental laws and regulations with those of the United States. EPA's decision to require its transient test may be a violation of GATT. Moreover, unless the transient test requirement is rescinded, U.S. manufacturers may be forced to develop both transient and 13-mode test capability to be able to certify engines in both the United States and Europe.

The transient test was imposed prematurely based upon inadequate data and insufficient justification. We recommend amendments to the Act directing EPA to rescind the transient test requirement, to allow 13-mode test certification to standards equivalent to the transient standards, to determine whether a transient test is justified, and, if so, to develop and validate it before imposing it on industry.

Cumulative Effects of Regulations on New Product Introduction

EPA has issued two regulations effective as of 1984, and has reproposed a third, which together could jeopardize our current business and threaten to halt the introduction of our new products. None of the regulations are required by the Act.

The first is the redefining of "useful life" from the current

100,000 miles (also the period of our commercial warranty) to "actual life" equal to the "average period to engine rebuild or replacement." But this is the point at which one-half of the engine population will have already undergone major repair due to normal wear, to excessive loading, or to improper or inadequate long-term maintenance. Because heavy-duty diesel emission control technology tends to be an integral part of the engine, major repairs that would normally be outside the commercial warranty coverage might nevertheless be covered by an emissions warranty. In effect, the new definition of "useful life" will tend to result in a *de facto* extension of the commercial warranty to the point where half the engine population will have undergone major repair, independent of any emissions related issues.

The promulgated regulatory change defining "useful life" has enormous implications for warranty costs because of the *de facto* extension of our commercial warranty. We project [redacted] an additional annual warranty cost on current products of approximately $230 million --- 3½ times our current costs --- which will add approximately 20% to the current cost of an engine, if "useful life" is set at 250,000 miles. Based on limited data, 250,000 miles is a preliminary estimate of "actual life" as defined in the regulations. The price increase necessary to recover this added warranty cost is not sustainable in the marketplace. Ironically, this regulation may create an incentive for some users to do the minimum necessary maintenance and to overload their engines on the chance that a major failure will occur before the end of a defined "useful life," resulting in a free rebuild or new major components under an emissions warranty.

New product introduction would also be hindered by the significant increase in warranty costs resulting from this new "useful life" definition, and by the added uncertainty arising from the inability to estimate these costs accurately beforehand.

The second is a proposal for durability testing, which is substantially the same as a proposal EPA issued in 1979 but withdrew in 1980. The purpose of this test is to measure the extent to which the emissions control technology of each family of heavy duty diesel engines deteriorates during its useful life. This measure of deterioration would be used to adjust certification and production audit data to determine whether standards were being met.

Because of the new "useful life" definition, this test would take between 2 and 3 years for our current engines. If a manufacturer were to produce and market certified engines before the durability test were completed, data from the test could at any time during the 2 to 3 years period result in revocation of the certification and recall of all engines produced and marketed thereunder. The financial consequences of recall are so great that manufacturers will be forced to postpone product introduction until durability testing is completed. This would affect both new engine development as well as improvements in existing engines, especially where required to meet new emissions standards.

EPA would not appear to possess data to justify this durability testing proposal. All available evidence suggests that deterioration of heavy-duty diesel engine emission control performance is insignificant. But, from the manufacturers perspective, the financial consequences of the recall of 2 to 3 years production all at once represent too great a risk to rely on this 1000-hour-test evidence of non-deterioration.

The effect of the proposed durability testing by itself would add to the risk of recall for existing products forced to meet new standards; it would delay new product introduction or existing product improvement for a minimum of 2 to 3 additional years. Even if production were postponed pending completion of durability testing, failure to pass the test would require the manufacturer to establish a lower emissions design target and then repeat the durability test. As a consequence, the delay could be 4-6 years or even indefinite.

The cumulative effect of the new "useful life" definition upon warranty costs and durability testing, and of the proposed durability test upon market planning would tend to jeopardize existing production and halt product improvement or new product development and introduction. This would threaten to deny to the public the increased fuel economy, operating efficiency and other benefits resulting from improved or new technology.

The third regulation --- the selective enforcement audit (SEA) at a 10% acceptable quality level (10% AQL) requires 90% of engines actually produced to meet the standards. This regulation fails to recognize the considerable variability --- engine to engine, test to test, and laboratory to laboratory --- which currently exists. A 10% AQL only adjusts for a portion of this variability. The result, in conjunction with durability testing and a longer "useful life," is to require a manufacturer to design an engine to even a tighter standard than a 10% AQL alone would require, in order to give the manufacturer confidence about passing the SEA. An SEA at a 10% AQL exacerbates the effects of the other regulations.

Understanding the Process by Which Engines are Manufactured and Used

The purpose of these costly and complex regulations is to ensure compliance with emissions standards by in-use engines. But the regulations will not achieve this goal. Because heavy-duty diesel emissions control technology tends to be an integral part of the engine, owners and users will tend to maintain emissions control systems as a consequence of protecting their commercial interests by proper maintenance of the whole engine. Conversely, regulation directed solely at the manufacturer cannot ensure emission compliance if technically sophisticated owners and users can either modify emission control systems to improve heavy-duty engine performance, or can neglect maintenance of control technology without loss in heavy-duty engine performance.

The design of the regulations themselves indicates that EPA may not well enough understand the integration of manufacturers and users in the heavy-duty engine industry. These rules would require manufacturer responsibility for the integrity of heavy-duty engine emission controls during a time when the manufacturer has no control over the engine. What is required is a balancing of responsibility between manufacturer and user.

Moreover, it is doubtful that there are current data on the health risks from mobile source emissions to justify these costly and complex rules. It is essential for us to establish a process for continuously developing the best possible and most credible health effects evidence if we are to direct scarce resources efficiently to our most compelling public health problems.

Imposing all the burden for compliance on the manufacturer, as would these three regulations, would be enormously costly, ineffective and inequitable. We recommend consideration of revisions to the Act which provide:

(1.) A definition of "useful life" for emissions control purposes as coterminous with the commercial warranty set by the manufacturer and in no event greater than the "half-life" of the engine.

(2.) A prohibition of in-use durability testing as proposed by EPA in its Advanced Notice for Proposed Rule Making for NOx of January 9, 1981, pending completion of EPA and industry studies to determine the real need for and alternatives to that durability test.

(3.) If a production audit requirement is to be retained, a 40% Acceptable Quality Level for each certification family should be established, as is the rule for automobiles.

Conclusion

We trust that our testimony has provided helpful criticism of some existing regulations and regulatory processes. We believe these criticisms should be addressed this year in legislative amendments to the Clean Air Act to enable that Act to accomplish its goals effectively, efficiently and equitably. Addressing them by administrative action may be difficult because of ambiguous statutory language and the probability of protracted litigation.

THE INDUSTRIAL ASSOCIATION OF QUINCY, INC.
424 WCU BUILDING · 510 MAINE · QUINCY, ILLINOIS 62301 · PHONE 217-222-0679
KENNETH H. SMELCER · EXECUTIVE VICE PRESIDENT

TO: Senator Charles Percy

FROM: Kenneth H. Smelcer
Executive Vice President

DATE: July 1, 1981

The Industrial Association of Quincy represents approximately fifty manufacturing companies and associated businesses. Our companies are both large and small, and range from privately held to stock corporations to those whose headquarters are in other parts of the country.

Our group's concern is for those problems that we have because we are manufacturers. Many of those problems are directly related to government regulations, interpretation of the regulations, and lack of coordination between the agencies. So many items seem to have "catch 22" circumstances. The following are some examples: Paint used in our manufacturing operations are basically solvent based. The EPA Clean Air people say that the solvents could possibly be harmful floating in the air, so they are requiring through application of their standards that most manufacturers with painting booths stop using solvent-based paints. About the only reasonable alternative is to go to a water-based paint, which frankly leaves much to be desired when being applied to many metal surfaces. If we overcome the difficulties and make the switch, we then run into problems of disposing of the paint sludge. Our paint booths would then meet air standards but the water-soluble- paint sludge does not meet landfill requirements.

The water-soluble paint has a tendency to leach, so the EPA doesn't want you burying it in a landfill. It is a matter of time until this crisis hits. Don't these two parts of the same agency talk to each other? When you pose the question to them, the answer is, "Our job is to enforce the regulations as they are written and interpreted".

Another example is the regulations and EEO. You are not supposed to signify in any way that a person is a minority group of any kind (race, sex, age, etc.), but on the other hand you are required by the government to report these figures. You are not allowed to ask much more then a person's name on a application blank. Yet, if you are charged with discrimination in hiring, you are supposed to supply the government with all kinds of information that you are not allowed to have on the application form--damned if you do--damned if you don't.

TO: Senator Charles Percy Page 2

DATE: July 1, 1981

Another problem that exists for manufacturers in Illinois is that the State of Illinois takes the Federal Regulations and tries to make them stiffer or in the case of benefits make them more liberal. An example is the paint sludge problem that was referred to earlier. The Federal Regulations could allow some of it to be dumped in a landfill, but the State of Illinois has taken upon itself to write even tighter criteria which ends up classifying the sludge as hazardous waste. This simply is not correct and because the State of Illinois is trying to compete with New York and California as to who can be the toughest, the manufacturers and the people of Illinois suffer because of the State created poor business climate.

Perhaps this is not the proper place and time, but the State of Illinois has taken the same approach in reverse when it comes to benefits in Workmen's Comp and Unemployment. We in Illinois are one of the most liberal in the country and it is hurting us.

I would like to finish with one general comment. I have not given a long list of detailed problems that the manufacturing companies have had with government regulations, but if the Committee has the time and wants to sit down with our engineering and personnel people, we can give you that data. Regulations that maintain order in a creative process like "doing business" is good, but many of the regulations that we face are aimed at stifling business. Business creates jobs, provides the livelihood for more than half of the people in this country (much larger if you count the government employees scrutinizing business), and through research provides us with an even better quality of life. All we ask is that we be allowed to operate in a reasonable common sense framework. Duplication of forms, conflicting regulations, and unreasonable requirements all hurt the businessman in Illinois competing against the other states and the rest of the world.

PREPARED STATEMENT OF LONNIE J. JOHNS

My name is Lonnie Johns, and I appear before this subcommittee representing the Jacksonville Chamber of Commerce. All of us are concerned about excess federal regulation which is sometimes overlapping and contradictory, sometimes costly and unproductive, and always generative (if nothing else) of piles of paperwork.

But today we wish to discuss a problem that affects this city, Quincy, IL, and all of west central Illinois: scheduled bus service and the Interstate Commerce Commission. What happens when a company holding monopoly authority decides to quit serving the public? In this case, before the Interstate Commerce Commission, nothing.

Jacksonville Bus Line Co. holds sole authority to run scheduled buses from Quincy and Hannibal, MO, to Springfield, IL, and from Peoria, IL, to St. Louis, MO. In 1972 this company was sold to Everist Transportation in Springfield, IL. Since this time there has been a systematic reduction of service. In 1972 you could leave Quincy twice each day to go to Springfield; now a bus runs once a week. You could go from Peoria to St. Louis twice a day; now this bus, although scheduled once a week, usually does not run at all.

The public can stay in St. Louis 30 minutes or stay a week, go to Quincy for 20 minutes or stay 7 days, visit Peoria for 50 minutes or remain there until the next bus a week later.

In a letter to the Commerce Commission, State Representative Jim Reilly says, "It appears to many of us that a consistent effort has been made to phase out scheduled service by downgrading that service to the point where no one wants to ride. Schedules are changed frequently and inconveniently with no real effort to acquaint riders with the details. The carrier has never advertised the existence of service. Then the carrier has the gall to use poor ridership as a reason to cut back further on service."

The company moved the Jacksonville bus depot 5 times in 4 years with no notice to the public; had no printed schedule available for distribution to the public; used a bus that was not air-conditioned in summer and not adequately heated in winter; a bus that several times had to be started by the passengers getting off and pushing it; the company was in violation of almost every standard for adequate service as adopted in 1977 by the Interstate Commerce Commission.

Did the Commission take action? Yes, but their only action was to give the bus line brand new additional authority for expanded charter operations.

On June 22, 1977, the Jacksonville Chamber of Commerce requested the Interstate Commerce Commission to postpone the granting of new charter rights to Jacksonville Bus Line Co.

The ICC replied, "This authority would neither authorize discontinuance of nor have any effect upon existing regular route service." In July, 1977, the Chamber filed a Motion to Act on the previous request for postponement, stating "As we feared, Jacksonville Bus Line Co. immediately filed to further reduce their service by 66%. This certainly is not in the public interest, and confirms our expressed concern."

In September, 1977, the ICC replied that District Supervisor Harold Jolliff had made an investigation of Jacksonville Bus Line Co., and that the Chicago office would "...inform you of the handling of this matter by the Bureau of Investigations and Enforcement." Several further requests received the response that the investigation was "in progress." Finally late last year I was told informally that the investigation "just petered out."

In the Certificate of Public Convenience and Necessity granted the Jacksonville Bus Line Co. by the Interstate Commerce Commission, it states, "It is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate."

The basic problem is the monopoly authority held by the bus line, the lack of any competition whatsoever, and the inability of new firms to get authority. As stated in a report of the U.S. Department of Transportation dated January, 1980, "The regulatory process itself appears to have been the principal barrier to entry. Virtually all applications for authority for a new carrier to operate where another already provides service, are protested by the existing carrier, setting in motion a cumbersome, time-consuming and expensive set of regulatory procedures to determine whether the new service is required to meet the public convenience and necessity. Several years and thousands of dollars in legal and other costs may be involved before such an application is finally resolved. In sum, new entrants, along with the fresh and innovative ideas they typically bring to an industry, have been discouraged."

In August, 1980, the Jacksonville Chamber formed a Task Force for Adequate Bus Service (which I chair), to attempt to remedy this situation. After receiving over 200 written complaints about the lack of bus service, after holding a public hearing on the problem, we finally got some action from ICC, only with the help of Congressman Paul Findley and Senator Charles Percy.

In November, 1980, ICC issued a "warning letter" to Jacksonville Bus Lines stating "You are reminded that in the granting of your application MC-59717 (Sub. 8) on June 1, 1977, for charter service, was in part based on the condition that such grant would not have any effect on your duty to provide reasonably continuous and adequate service. It appears that Jacksonville Bus Lines has curtailed such service in favor of charter operations. Code of Federal Regulations

49 CFR 1036.6 provide procedures for making changes in service responsibilities. Your firm appears to have totally ignored such procedures."

Of course this was the Chamber's exact position in 1977.

This has been the total extent of ICC action. The bus line has made no changes in schedule, and the situation is now complicated by a sale of the assets of the bus line to Horizon Charter Coaches, which has no authority to run scheduled buses.

What action can be taken to improve this regulatory impasse: the complete deregulation of the bus industry, except for safety regulations.

There are now bills before the Congress to change the ICC's control of intercity buses. The proposal of the American Bus Association (Bus Regulatory Modernization and Improvement Act of 1981) is completely unacceptable. It would allow new bus lines to enter a market only if they did not impair the operations of existing carriers. The very basis of new entry is new competition, and that may mean if the old company can't compete its operation will be impaired.

We greatly appreciate this opportunity to appear before this subcommittee, and would hope to offer you additional information on the need for bus deregulation.

Office of Consumer Protection
Everett McKinley Dirksen Building
219 South Dearborn Street, Room 1304
Chicago, Illinois 60604

November 13, 1980

Mrs. Lenore Everist
Jacksonville Bus Lines, Incorporated
2106 East Cornell Street
Springfield, Illinois 62703

WARNING LETTER

Dear Mrs. Everist:

This is in reference to your recent conversation with Mr. Richard Pettit, Interstate Commerce Commission, Chicago, Illinois regarding Jacksonville Bus Lines' operating authority.

As Mr. Pettit advised you, we have received complaints that Jacksonville Bus Lines was not providing service between Peoria, Illinois and St. Louis, Missouri in violation of the Certificate of Public Convenience and Necessity.

A call to your Jacksonville depot on November 6, 1980 revealed that your depot manager stated there was no Peoria-St. Louis service and that Jacksonville Bus Lines did not have authority to perform such service. During a call later the same day to your office, a Carol Vinson stated that your firm did have the authority and that a run was made once a week (every Thursday), although she could not give the arrival and departure times because the schedules were being revised.

In your call later the same day you stated that Jacksonville Bus Lines did provide Peoria-St. Louis service but on a fragmented basis, i.e., Peoria to Jacksonville on a particular day, then Jacksonville to St. Louis a day or two later. Such fragemented service may be in violation of your operating authority in that you may be not providing a reasonable nor continous service as required.

You are reminded that in the granting of your application MC-59717 (Sub. 8) on June 1, 1977 for charter service, was in part based on the condition that such grant would not have any effect on your duty to provide reasonably continous and adaquate service. It appears that Jacksonville Bus Lines has curtailed such service in favor of charter operations. Code of Federal Regulations 49 CFR 1036.6 provide procedures for making changes in service responsibilities. Your firm appears to have totally ignored such procedures.

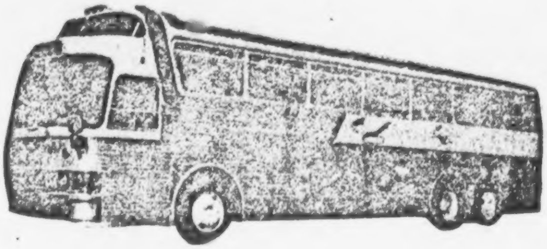
Please consider this as a warning letter against such continued operations. The Interstate Commerce Act provides penalties for violations of the Commission's rules and regulations. You are requested to provide this office with a written response within 15 days after the receipt of this letter as to what correction action you plan to take in this matter.

Very truly yours,

John H. Kirkeno
Assistant Regional Director

PREPARED STATEMENT OF JERRY ELDRIDGE

Q-City Roadrunner
4121 North 12th Street
Quincy, Illinois 62301
(217) 222-5966



Senator Percy,

In dealing with government buracracies, the hardest hit by regulations and reports is the small business. They are required to abide by almost as many rules as the major industries, report the same information and comply with the same standards. At the same time, their staff structures are much smaller and their operating capital is very limited placing a greater stress on them than on a larger firm. To correct this, an examination of all regulations is in order and you are to be commended for taking this gigantic step in the right direction. I hope we will see some definite results in the near future.

Being in the transportation business, I feel the government regulating monster more often than most. Many of these rules are to the benefit of the general public, all of them were instituted for that goal, however, in the corse of time some of these rules have been twisted by either the government or private industry itself and there is a detrimental effect on the consumers.

On January 6, 1981, our firm was contacted by Quincy College to transport their men's varsity basketball team to Kirksville, Missouri for a game. Our bus is parked less than one mile from Quincy College. Our rate, at that time, was $196.00 for the round-trip cost. Due to the I.C.C. regulations governing interstate commercial transport we were unable to accept this contract. According to the rules, a bus would have to be brought from Springfield, Illinois, (empty), which is 100 miles away, pick up the players, take them 70 miles to Kirksville, return them to Quincy, then return again to Springfield empty. The only other alternative was to proceed with the same process only this time bringing the bus from St. Louis, Missouri, (130 miles) adding tremendously to the cost for Quincy College, plus the waste of at least 35 gallons of fuel.

The results of regulation over charter busses is higher prices, reduced service and wasted fuel. Illinois deregulated busses several years ago.

This deregulation resulted in - not less service - but more companies to service the needs of the public plus lower rates within the state.

The I.C.C. will argue that one needs only to apply for authority and it will be granted. Our application was submitted on October 15, 1979, and was not granted and approved until April 29, 1981. This is a long time to wait for a community whose closest charter bus with authority is 100 miles away.

Needless to say, this hits the hardest to those you want to hurt the least...the elderly and the young students.

With deregulation of airplanes we freed the mail. With deregulation of trucks we freed the livestock. When will the government get around to freeing people who want to travel in groups?

Another irritating regulation that was started to save fuel has proven to waste the same. I'm speaking about the stupid and rediculous 55 mile per hour speed limit for diesel engines. At 65 miles per hour my bus will average 9 miles per gallon. At 55 miles per hour it averages 7 miles per gallon. Of course, this is because it was geared to run 65 when built. It also consumes less fuel on hills when it can hit the hill at 70 miles per hour. I realize this will be a blow to the state tresurers around the country and the various state police might truly be released for other duties, however, the savings in fuel would be well worth the effort.

Finally, this committee has made victims of those testifying. In order to find what rules cost us money we were asked to testify to this committee. One rule accompanies this request . . . that we make 55 copies of our testimony and submit them in advance. This is a small price to pay if it results in deregulation, however, it is most indicative of what we are all talking about.

I thank the members of this committee for their interest and congratulate them for taking on this monumental task of looking at government regulation.

Respectfully submitted,

Jerry Eldridge
Owner/Operator

PREPARED STATEMENT OF ARTHUR W. O'CONNOR

General

There are several aspects of federal legislation and regulation which unfavorably impact our business in common with most other manufacturers and I trust your hearings will elicit good comments on these.

For us, however, there is one issue that is of such overriding importance to our industry, and specifically to our operations in Red Bud, that I want to concentrate my entire statement on it.

Business Description

The Singer Company's Climate Control Division manufacturers residential and commercial heating and air conditioning equipment at three locations in the United States, one of which is in Red Bud, Illinois, about 30 miles South of East St. Louis, in Randolph County.

At Red Bud, our 600 employees produce $60 million of such equipment. 75% of this, or $45 million, is central residential furnaces, air conditioners, and heat pumps.

Issue of Concern

Most of these central residential products are designated as Covered Products under Section 322 of the Energy Policy and Conservation Act (EPCA) (P.L. 94-163) as amended by the National Energy Conservation Policy Act (NECPA) (P.L. 95-619). As such, they have become subject to the regulatory program for appliance efficiency of the United States Department of Energy (DOE) and the Federal Trade Commission (FTC).

There are three facets of the Regulatory Program. These facets, and their related sections of EPCA, are as follows:

. . . Section 323, Product Testing
. . . Section 324, Product Labeling
. . . Section 325, Minimum Efficiency Standards

Background

For over 20 years, the Air Conditioning Industry has, through its industry trade association, Air Conditioning and Refrigeration Institute (ARI), conducted a program of certification of manufacturers' equipment ratings. As the program evolved, it ultimately included certification of:

. . . capacity rating, expressed in BTU per hour (BTUH)
. . . power input rating, expressed in watts (W)
. . . energy efficiency ratio (EER), an expression of BTUH/watt (like miles/gallon for an automobile).

These certified ratings are published semi-annually by ARI in a widely used Directory of Certified Ratings. A copy of the July 1 - December 31, 1978 edition is enclosed as Exhibit A.

While these ratings were certified to ARI by the manufacturer, ARI conducted a verification program of testing by an independent laboratory of 30% of the manufacturer's basic models each year. If the unit tested by ARI's independent laboratory deviated from the manufacturer's published rating by more than the permissible tolerance, the manufacturer was required to rerate his equipment to the tested level.

In addition, certification requires that the unit pass several severe operating conditions tests that are important to assure buyers that the equipment will perform under most of the unusual conditions that would be encountered in actual use.

The ARI Certification Program is open to members and non-members on an equal basis. About 95% of the units sold in the United States are covered by this program.

The program continues in effect but has been severely disrupted and distorted by DOE's actions.

Section 323 - Product Testing

What DOE did with this section is the root cause of the problem we face, and is a prime example of regulation run amok at enormous cost.

DOE felt that the industry's measure of energy efficiency EER (Energy Efficiency Ratio, an expression of BTUH/Watt) was unrepresentative of the way the equipment would perform in actual use over the course of an entire operating season. This is because capacity, watts, and EER are determined in a single "steady-state" test in which the equipment operates steadily at full load with 95° air on the outdoor portion of the unit, and 80° air on the indoor portion of the unit. The feeling was that in actual use, the cycling of the compressor on and off many times over the course of an operating season would introduce efficiencies which would make seasonal performance less favorable.

DOE then established and promulgated on November 25, 1977 an arbitrary test procedure to determine what it called SEER (Seasonal Energy Efficiency Ratio) which was intended to account for the cycling inefficiencies, and then required that this be used as the measure of energy efficiency (in lieu of EER) after January 1978.

Because the industry could not comply with the new test procedures in time, the July 1 - December 31, 1978 edition of the ARI Directory of Certified Ratings published no measure of energy efficiency since EER was outlawed, and manufacturers were not yet able to state their SEER's. In one way or another, the Directory has been disrupted ever since then.

Beyond this, SEER has turned out to be a disaster for the following reasons:

1. SEER is Unrepresentative

As indicated above, it was introduced to account for cycling inefficiencies. Probably the thought was that EER was analogous to EPA's favorable highway mileage rating for automobiles, and SEER would be analogous to the much lower comparison mileage rating. However, air conditioners don't work that way - - at least as measured by SEER - - and as a matter of fact, SEER currently averages about 5% higher than EER.

In any event, nobody really knows whether SEER is an accurate measure for determining seasonal energy consumption or not because there has been no formal study to determine this by DOE or anyone else.

2. SEER is Exorbitantly Costly

The simple EER test requires about 8 hours to run in a suitably equipped test room. To determine SEER requires three additional tests which add 24 hours to the procedure.

Moreover, DOE established statistical sampling criteria which generally meant that two or three units of each model must be tested in order to support the rating which the manufacturer published.

To establish and verify ratings for the ARI Certification Program requires testing costs averaging $53,000 per year. The additional volume of testing required by these DOE procedures costs $445,000 per year and, for Singer required a new capital investment of $1,000,000 for testing facilities which we would not otherwise have made. A step by step explanation of these cost figures are attached as Exhibit 3.

It would be one thing if this testing cost were to produce a representative SEER that was significantly different from the simpler EER it supplanted. But it is an enormous price to pay to determine an unrepresentative SEER that is only 5% different from an EER.

Moreover, it develops that two of the three additional DOE tests to determine SEER proved to be very difficult to run. The industry has recently worked out the bugs and agreed on the changes required in the testing procedure to produce reliable and comparable results. This means, however, that most manufacturers must now repeat much of their previous testing.

3. SEER is Unfair

The testing requirements cited above fall equally on large and small manufacturers. DOE recognized that this would prove disproportionately burdensome to a small manufacturer and thus provided for the alternate use of . . .

. . . certain calculation factors in lieu of two of the additional three tests required to determine SEER.

. . . certain statistical procedures that would permit establishment of SEER ratings when testing fewer than three units of each model.

However, the SEER that can be claimed by the alternate calculation methods can easily be 10% less favorable than that which can be claimed by running the full course of the testing. Thus, a small manufacturer who cannot afford the large volume of testing can find himself at a 10% efficiency rating disadvantage against a larger competitor who can afford the testing but whose air conditioner may not, in fact, be any more efficient. This efficiency rating disadvantage may also make the difference between compliance and noncompliance with DOE Minimum Efficiency Standards if ultimately established.

4. SEER is Counter-Productive

The legislative/regulatory effect has clearly forced some degree of reallocation of each manufacturer's resources away from new product development in favor of SEER and in favor of statistical criteria testing. It has thus delayed in industry in producing higher efficiency equipment. The additional testing cost and capital investment Singer has expended on this testing just for the sake of testing could have been used to produce an additional higher efficiency product line within 3 years.

Moreover, there are now arising examples of manufacturers adding mickey mouse gimmicks that improve the results under the artificial SEER testing, but do not improve the basic efficiency of the air conditioner.

We also believe the thrust of the regulation puts undue pressure on costly "brute-force" improvements in air conditioner efficiency rather than on less costly but more innovative ways of reducing the energy actually used. It is by no means certain that today's high efficiency air conditioners will save energy - - they generally do a less effective job of humidity removal, and typical users will compensate for this by lowering the thermostat setting, thus using more energy to cool to the lower temperature at which, hopefully, humidity conditions will be improved so they can have air conditioning and still be comfortable.

Section 324 - Labeling

Labeling is a program to be undertaken by the Federal Trade Commission (FTC) based on DOE tests for SEER. The final rule has not yet been promulgated by FTC for central air conditioners as yet.

However, our industry has had some experience with the Labeling Program for furnaces which has caused undue burdens and, so far, useless results. This program amounts to a generic label on the product and a fact sheet that contains the Annual Fuel Utilization Efficiency (AFUE) as well as an average cost of operation chart which is subject to the same kind of inaccuracies pointed out below in our discussion of air conditioner use, and hours of operation. This fact sheet is supplied by the manufacturer to be displayed and/or made available to the consumer at the point of sale. This sounds like a reasonable way to inform the consumer of relative efficiencies in order that he, the consumer, may make a logical choice.

In fact, due to the way heating and air conditioning units go to market, this has had little or no impact on the buyer. These products are all contractor installed and there is little opportunity for comparison shopping, such as with refrigerators, washers, dryers, and other energy consuming appliances, which are sold in retail stores.

The net result is that when the consumer makes a furnace or air conditioner purchase it happens one of two ways; (1) he buys a new home and takes whatever unit has been installed by the builder or (2) if he is replacing his present unit he generally calls the local furnace and air conditioner dealer. He may get several bids but takes whatever the chosen contractor installs without ever seeing a label or fact sheet.

The ability for real comparison shopping, is not available even though the product is FTC labeled.

However, by using a program like the ARI Directory which includes capacity and efficiency rating of more than 95% of the available product our consumer can make a rational decision on efficiency and choose his contractor accordingly.

The purpose of labeling is to provide the consumer pre-purchase information about:

. . . the energy efficiency of this particular piece of equipment

. . . the range of energy efficiencies available in the industry for this particular type and size of product

. . . the average cost of operation of this particular piece of equipment based on regional weather conditions and the local cost of electricity

The principal concern is the cost of operation schedule. This is determined by selection of the number of operating hours from the DOE chart attached as Exhibit 2, and based on the SEER of the piece of equipment being labeled.

We have already explained our serious reservations about the value and accuracy of SEER.

We have equally serious reservations about the number of operating hours shown in the DOE chart on which the calculation is to be based. For this part of Illinois, for instance, DOE charts require the use of 1000 full load hours of operation per season. This is equivalent to a 95° outdoor temperature 11 hours per day for 90 consecutive days. 1,000 hours, we submit, is substantially higher than the average user will use his air conditioner. We suspect that DOE inflated the number of hours of operation for all regions in order to justify the cost effectiveness of the much more expensive super high efficiency models it would ultimately require under Section 325 - Minimum Efficiency Standards.

On the other side of the coin is the fact that SEER presumes an indoor temperature of 80° when the outdoor temperature is 95°. Some consumers may set their thermostats that high. But most will use 75°, thereby lowering the SEER and raising the number of hours of operation and, therefore, the cost of operation. For very high efficiency equipment which is less effective in humidity removal, we believe many consumers will depress their thermostats to 72° at least part of the time in order to overcome the humidity problem, thereby defeating the purpose of the very high efficiency.

Our point is that if the DOE operating cost data is correct, it can only be because of compensating errors. Actual weather conditions vary greatly within the DOE regions and from locality to locality. Air conditioning usage is so highly discretionary by the user as to hours of operation, temperature setting, and conservation measures that operating cost can vary by a ratio of 5 to 1 from installation to installation.

Thus, the DOE cost of operation data is inaccurate and misleading.

Section 325 - Minimum Efficiency Standards

At this time, it appears that DOE will not go forward with its Minimum Efficiency Standards Program.

It has not been viewed as cost effective and we heartily agree.

The industry and the buying public are responding to economic and marketplace forces which demand energy conservation by increased product efficiency, and more prudent usage. Thus, the cost of regulation becomes an inhibition to the natural process rather than a spur.

Since 1975, air conditioners with a SEER of 8.0 or greater have risen from 22% of the industry's sales to 50%. Conversely, sales of units with a SEER less than 7.0 have fallen from 19% to less than 7%. Consistent with that, Singer is now introducing two new lines of product ranging from 7.0 SEER to 9.5 SEER; and completely phasing out its existing product which had SEER's ranging from 6.0 to 7.0.

In the event that minimum efficiency standards should be revived, we would like to comment to you at that time.

Conclusion

The process DOE has taken us through has been enormously costly and counterproductive.

It has imposed actual operating costs on us as we have described. In addition, an exorbitant amount of time and travel has been required in analysis, position preparation, meeting attendance, appearance at hearings, letter and report writing and phone consultations by our key people in attempting to wrestle radical government regulatory proposals down to a reasonable level - - and with only limited success.

Because of the mood of the new administration which we believe reflects the feeling abroad in the land, the industry, at its May 1st meeting, came to a near unanimous conclusion that it was important to all parties involved--citizenry, government, and industry - - to try to get the original DOE regulation, and even the original EPCA/NECPA legislation on these issues abolished in favor of the operation of free market forces; or failing that, to try to cause changes which would put present and future regulation on a more rational basis.

Specifically we seek:

. . . the abolition of SEER in favor of EER.

. . . the abolition of statistical criteria testing in favor of the go/no go testing used by the ARI Certification Program

. . . the abolition of product labeling in favor of an ARI Directory.

. . . the abolition of minimum appliance efficiency standards.

EPCA and NECPA gave DOE plenty of leeway in implementing the provisions of Sections 322-325. It was DOE, itself, which used the law to justify its unreasonable and costly proposals.

Therefore, we would feel most comfortable if Sections 322-325 of EPCA were repealed, for this would prevent the resurrection of a hibernating, but not dead, regulatory bureaucracy.

Through ARI, we will make specific proposals to government. We pledge that our proposals will be responsible and that they will be advanced in the spirit of serving our country best.

Thank you.

effective
JANUARY 1—JUNE 30, 1978

EXHIBIT 1

DIRECTORY OF CERTIFIED

UNITARY AIR-CONDITIONERS

AIR-SOURCE UNITARY HEAT PUMPS

SOUND-RATED OUTDOOR UNITARY EQUIPMENT

CENTRAL SYSTEM HUMIDIFIERS

ENERGY EFFICIENCY RATIOS,
PAGES 10 THRU 85
AND 91 THRU 132

Important Note

On November 25, 1977 while the information on pages 10 thru 85 was being collected, the Department of Energy promulgated test procedures for determining energy efficiency ratios (EER's) for central air conditioners rated at less than 65,000 Btuh. These procedures could not be complied with in time to be reflected in this directory. In view of the need of consumers for the best information available, EER's contained herein are based on the ARI test procedures hitherto used for this purpose.

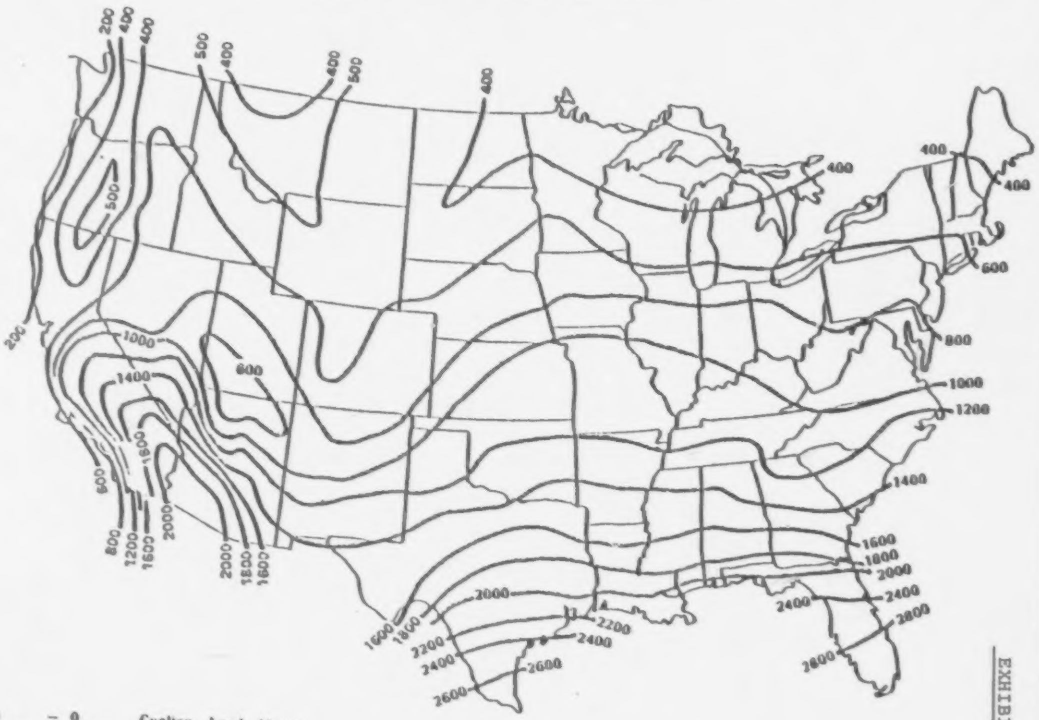
SPONSORED AND ADMINISTERED BY

AIR-CONDITIONING AND REFRIGERATION INSTITUTE
1815 NO. FORT MYER DRIVE, ARLINGTON, VIRGINIA 22209

ADDRESS INQUIRIES TO – DIRECTOR OF ENGINEERING

EXHIBIT 2

6.1.3 Distribution of Actual Cooling Load Hours (CLH_A) Throughout the United States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		Cooling	Load	Hours
Alaska	— 0			
Canal Zone	— 6,000	"	"	"
Guam	— 6,000	"	"	"
Hawaii	— 2,300	"	"	"
Puerto Rico	— 6,000	"	"	"
Samoa	— 6,000	"	"	"
Virgin Island	— 6,000	"	"	"

Senator Percy. We'll call our third panel. Mr. William Klingner, if you will come forward. Mr. John Phillips, Mr. David Metzger, Mr. Tom Castic, and Mr. John Norton.

While they are coming, I would like very much to introduce some of the members of our staff. Bill Strauss—would you stand—is staff director for the subcommittee of the Governmental Affairs Committee that's holding this hearing, and Rob Portman has done so much work with us. We're losing him to Harvard University in a few weeks, but he has done an outstanding job in connection with both of these hearings. John Caldwell is the manager of my entire downstate operation. Would you stand please, John. And Hal Smith, who is also in charge of Illinois projects, and Jeannie Obcamp, from our Springfield office.

Gentlemen, we're very delighted to have you here today. I know that, Mr. Klingner, you run a company engaged in major water and sanitation projects in western Illinois. I understand you've encountered a tremendous number of bureaucratic snags which have interfered with your ability to launch and complete these projects. We look forward to hearing what you have to say. Mr. William Klingner, W. H. Klingner & Associates of Quincy.

TESTIMONY OF WILLIAM H. KLINGNER, W. H. KLINGNER & ASSOCIATES, QUINCY, ILL.; JOHN PHILLIPS, GENERAL MANAGER OF KHQA-TV, TWAD, WTAD, WQCY, QUINCY, ILL.; DAVID P. METZGER, SPECIAL COUNSEL, OFFICE OF ADVOCACY, SMALL BUSINESS ADMINISTRATION, WASHINGTON, D.C.; TOM CASTIC, PLANT MANAGER, ILLINOIS MINERAL CO., ELCO, ILL.; AND JOHN NORTON, PRESIDENT, TAMMSCO, INC., TAMMS, ILL.

Mr. Klingner. It's a pleasure to have this opportunity to tell you some of our problems. I filed a report on June 11, and then after receipt of your invitation on the 16th, requesting specific acts which we are having trouble with, I'm filing a supplement. I'll paraphrase from that supplement, enumerating the various acts which are giving us major problems. May I preface my remarks by first enumerating the legislative legacy of the seventies.

We have the National Environmental Policy Act of 1969, the Clean Air Act Amendments of 1970, the Water Pollution Control Act Amendments of 1972, the Coastal Zone Management Act of 1972, the Federal Insecticide, Fungicide, and Pesticide Act and Amendments of 1972, the Noise Control Act of 1972, the Endangered Species Act of 1973, the Safe Water Drinking Act of 1974. the Federal Land Policy and Management Act of 1976, the National Forest Management Act of 1976, the Toxic Substance Control Act of 1976, the Resource Conservation Recovery Act of 1976, the Surface Mining Control and Reclamation Act of 1977, and the Clean Air Act Amendments of 1977.

Of course, not all of these acts, as well as many others not listed, are detrimental or unnecessarily burdensome. All were enacted with good intention and in good faith. I will attempt, however, to point out the major acts which seem excessive in my line of work, that line being engineering as it relates to public works and agricultural interests.

First, section 404, Public Law 92–500, the Federal Water Pollution Control Act amendments and the Endangered Species Act of 1973:

> The regulations promulgated thereunder have been used to constitute the greatest impediments to progressive Water Resources Development, of highway construction, private and public municipal improvements, and American productivity in the history of the United States.[1]

I firmly believe this.

Bills now pending which offer, or may offer, some relief to section 404, and I'm not acquainted with the full contents of these bills, are H.R. 393, by Congressman Paul, H.R. 3083 by Congressman Hall and S. 777 by Senators Tower and Bentsen. I would urge your honorable committee to make sure that Public Law 92–500 is made to apply only to navigable waters.

Second, the U.S. Fish and Wildlife Conservation Act of 1958, as amended, Public Law 85–624 provides that wildlife conservation receive equal consideration and be coordinated with other features of all water resources projects. One of my major interests is water resources projects. I might state that this act sounds good but it should not, in effect veto worthwhile projects. Our experience has been that the Department of the Interior through its Fish and Wildlife Department has been illogical and unreasonable in its demands for mitigated damages on water resources projects and has, in effect, constituted a veto power on otherwise sound projects.

Third, the Federal Water Recreational Act of 1965 provides full consideration be given to the opportunities for recreation in all water resources development. This act also sounds reasonable and good. However, our experience has been that the recreational interest are over zealous of their new found power and often act as a deterrent. Some method must be found to expedite decisions.

Fourth, the Water Resources Planning Act of 1965. The Water Resources Council as constituted seems to have engaged in engineering planning and not as a review policy agency. It appears that this agency is a place for pigeonholing worthwhile projects. Personally, I'd like to see it abolished or as a compromise constituted as a review agency, which I don't think we need, but at least it would not be a hinderance.

Fifth, the National Environmental Policy Act of 1969. About all I can say about this act is that it has cost me personally many thousands of dollars, as well as our clients, by negating water resources projects which were otherwise sound. The adverse environmental effects were and are a matter of debatable opinion. Projects have been stopped even after Congress authorized and appropriated initial construction funds. The sponsors with their legal and engineering obligations have been left high and dry. I won't go into great detail, but I have in my mind one project in which over one-half million dollars in Federal and local planning funds were spent. The project was authorized, initial construction funds appropriated by Congress, and the project died because of the environmental impact statement being negative, which left the local sponsors with court costs, engineering costs, commissioners costs for appraising damages, and et cetera.

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[1] Ival Goslin, Chairman, W.R.C., May 1981.

Senator **Percy**. Mr. Klingner, we will put your full statement in the record. We ask you to summarize in conclusion.

Mr. **Klingner**. I am concerned and have some reservations over Executive Order 11296, dated August 11, 1966, and Executive Order 11988, dated May 24, 1977. This has to do with phaseout of the cabins along the Mississippi River. My written statement delves in detail in that matter.

I have one other, if you'll bear with me, one other public law, Public Law 95–502, which has to do with the Alton Dam, and also the master plan study being made by the Upper Mississippi River Basin Commission which gives me great concern.

I would urge you, as a Senator, and your honorable committee to take a careful look at the final recommendations to see that we do not have, again, duplicate agencies regulating the operation and the maintenance of the Mississippi River. I would like for you to keep that in mind, if you would, please. It has been a privilege to make this statement. I have indicated and attached a written statement of the concerns we have on various projects.

Senator **Percy**. Thank you very kindly.

Our next witness, Mr. John Phillips, general manager of KHQA–TV, channel 7. I think, like I say, Mr. Phillips, the western Illinois community, and a large community also in Iowa, is very fortunate to have two such excellent stations as KHQA and WGEM in Quincy. Both stations have excellent public service programing. Because we are so accustomed to television stations providing forums for addressing the problems of the community at large, we sometimes lose sight of the fact that broadcasting is a business in its own right, with its own special problems, and we're very pleased to have you here today.

Mr. **Phillips**. Thank you, Senator. Senator Percy, Mr. Metzger, ladies and gentlemen. Allow me to express my appreciation for the opportunity to speak at this hearing. The very fact that the hearings are being held, emphasizes what has been described as a "breath of fresh air sweeping across the prairies," and, personally, I like the term used by the new chairman of the FCC, Mark Fowler, when he refers to unregulation as compared to deregulation.

I personally firmly believe that the purpose of Government is to do for the people that which they cannot do for themselves, and otherwise stay out of their lives and businesses. I can even go so far as to object to no smoking signs.

Although great strides have been made toward the unregulation of radio and TV. there are still many areas that appear in our eyes to be unnecessarily burdensome and impractical.

And, if I may, I would like to present to you what has been required of us in preparing a license renewal, and what is still involved in this area. It will only take a minute. We have three stations—AM, FM, and a TV. There is one page that covers all phases of our operation. We are not a large operation. We're in the 145th market in the United States. Our radio is over 50 years old, and our television is now approaching 30 years of age. We've operated in the public interest, convenience and necessity all these years, but one page in those books for our 1980 programing report, we have to go through all of these to prepare that one page that says how did you do. What they asked us to do is to prepare a document that says, and we call it our annual programing report, between the hours of 6 and 11 p.m., a separate column from 6 a.m. to midnight, and from midnight to 6 a.m., how many hours, how many minutes of the day did you operate each of these areas, how much news, and you must take out the commercials in those newscasts that you run, how many minutes, total public affairs programing, excerpting commercial, total other programing not counting sports, local news, local public affairs, local other nonentertainment, and then all programs totally.

The report looks like that, but in order to do that, we have to go through logs and count every minute of the operating day documenting commercials from that which constitutes forms like this for every day of the week breaking out the various day parts and so forth to comply. That's just one of the things.

Many of these things, the Government is fast moving to relieve us of this burden, Senator, and I appreciate it because it has been a burden to keep us from doing the thing we're set to do, and that's to run a radio and television station for the people of this area.

I feel that the Government agencies and corporations are alike in many respects, and one management rule that applies to both of them is that "when the man at the top takes one quarter turn, it causes the people, or employees, at the other end of the rope to spin at 90 miles an hour." Many well-intentioned laws are passed and rules laid out that cause this to happen. One such case is the public inspection file required by the Federal Communications Commission.

We are required, and on the surface it sounds good, to maintain a public inspection file where the public at any time—during the regular business operating hours—can come to the station and look at our records which are to include the following: License renewals for the period of 7 years, political files for a period of 2 years, comments from the public for a period of 3 years, community leadership surveys for a period of 7 years, general and public surveys for a period of 7 years, ownership reports for 7 years, and annual programing reports for a period of 7 years, annual employment reports for a period of 7 years, significant community problems with programs to cover those problems for a period of 7 years, plus the broadcast primer.

In addition, there are many listing technical facilities. We have maintained a public inspection file in our offices, lo, these many years, and in the 10 years that I have been manager, four people have asked to see this file. One of them was a student of Nicholas Johnson, a former FCC Commissioner, who retired from Washington to teach at Illinois, who made it a class project to go see if we really do have a public inspection file. There is only one really legitimate person that said I heard you have a public inspection file and would like to see it. It's there if anybody wants to see it. It takes four filing cabinets and fireproof ones at that, of course, because we sure wouldn't want to lose them.

In addition to the Government forms required, it becomes our corporation's responsibility to see that all divisions are complying with Government requirements, and therefore more checklists and reports are needed, and then, in turn, within our division, a number of checklists and reports are required to see that our supervisors are applying all the rules. So all of the above is done to be sure equal employment is assured in the radio and television stations in Quincy and Hannibal, with a combined population of 63,897, and a percentage of less than 3 percent minorities in the work force. This means our staff should include 2 minorities on a staff of 65 employees. Many years our turnover will provide less than four job openings throughout the entire staff. For markets our size, I say to you there must be an easier way to insure equal opportunity for employment.

When Government or business creates a new department, such as the one in charge of Equal Employment Opportunity, you can be assured that they will turn out enough recommendations and enough new requirements to justify everyone's working 8 hours a day, and the continued future existence of that department. It works the same way in business. You can't start a department without having them do a lot of work, and if they don't, why so it just goes on.

But I would like to say personally, and as a corporation, we are committed to equal employment for everyone. It's the fair, honest, and right way to run a railroad, but it seems to me a simple yes or no to, "Do you employ minorities and women as they are indicated in the work force?" would suffice.

Thank you again for allowing me the time at this hearing. I'm pleased at what I'm hearing and seeing about unregulation, and certainly hope it proceeds at an accelerated pace. My congratulations to Vice President Bush and to you, Senator Percy, for your concerns in this area. Thank you.

Senator PERCY. Thank you very much indeed, Mr. Phillips.

I'm going to change the order just a little bit because our next witness, who follows this panel, has a plane to catch, and in order to get him on that airplane, we're going to have to ask Mr. David Metzger, special counsel for the United States of advocacy of the Small Business Administration, who is representing the President today, to join the panel. I couldn't think, David, of any more appropriate place for you to be than right in between people who are acquainted with the very nature of the problem—diverse businesses and television stations and so forth, all burdened with one problem—excess of Government regulation.

We are very, very pleased to have you join us from Washington today. I have been working closely with the Vice President and David Stockman, the Director of the Office of Management and Budget, to make these Illinois hearings an important part of President Reagan's regulatory reform efforts. We cannot overemphasize how important it is that the administration has sent representatives to these hearings.

It's one thing I know to read letters and get reports, and another to just come right out in the community; it's a different ball game when you can actually have a representative present right here to meet the people. They're not extremists in any regard. They're just trying to do an honest job of representing their business. When Mr. Phillips is reminding me of the fact that all those figures are available, thousands of man-hours that go into them, and over the years one legitimate representative has actually come in to look at all those figures, it reminds me of the argument I used to get rid of all the paperwork involved in registering shotgun shells. You can't trace them. There is no ballistic sense in it, and yet hundreds of thousands, even millions of people stand in lines at the beginning of hunting season to send in all those files. I went down to the Treasury to find out how many people had ever looked at them. No one. No one had even filed them. They were just boxed up. No one could find anything in them. Now it made no sense, and we finally abolished that. Maybe we'll get around to television stations as well.

In Rockford, we had Donald Trilling, who is staff director of the President's automotive industry task force for our hearing on automobile regulation. That was someone who is an extraordinarily valuable representative of the President. Tomorrow, in Peoria, we'll be joined by Dr. Thomas Hopkins, OMB Deputy Administrator for Regulatory Affairs. Here in Quincy we couldn't have asked for a more appropriate representative of the President.

Mr. Metzger, your office performs a unique role in Government today. As an advocate for the small business community, you can relate to the problems raised at this hearing better than anyone else in Washington. We're pleased to have your statement given at this time. I'm sorry that you weren't able to stay on for the other witnesses, but we will provide to you, as you leave, for your reading on the plane, copies of all the testimony. Certainly, the full record of this hearing will be made available to you and your office.

Mr. METZGER. I will take your previous remarks into consideration, Mr. Chairman. I feel very comfortable with these small business people. The only objection I could think of sitting in this company is whether they are willing to put up with an attorney in their midst. I would like to say in my own defense that I consider myself a lawyer with my hands in my own pockets. I'm pleased to be here to represent the SBA Administrator, Mr. Michael Cardenas, and Mr. Marshall J. Parker, who is the acting chief counsel for the SBA, who could not be here today, but would have enjoyed this immensely.

I would like to say, just by way of brief personal introduction, that my wife hails from the State of Illinois, and that I'm a resident of your sister State, Wisconsin. That was my home, and I feel it is of great importance to mention that my father is a small manufacturer in Milwaukee, Wis. I was brought up with the problems of small business in my family. He knows full well of agencies like DOE because they manufacture furnaces. They know full well agencies like OSHA, and they know full well other agencies like NLRB, and, of course, from day 1 the IRS.

In the past several years, there has been a great deal of education of the Congress and of the Federal branches of the problems of small business. I would like to direct your attention to page 2 of my written statement, which looks more or less like a recipe for alphabet soup. It lists the 24 Federal agencies that have been established since 1970 that have rulemaking authority that could affect small business. Not all of those do, but you will see some that do, of course, in great respect.

The Environmental Protection Agency created in 1970, the Department of Energy, 1977. These are all very burdensome agencies that have been created. Regulations have come from many different sources over the past few years, and with increasing cumulative effect. That is a term I would like to underline. Small business knows well that it is not the agencies of any one source, but all of them piled on so to speak that create their massive problems. I would like to point out that when you have a regulation that increases fixed costs of business, there is no doubt there is a disproportionate increase in the burden on small business, increasing proportionately their fixed cost to a greater extent than the increases in costs by the same regulations on a larger business.

It is that disproportionate burden I think that has been of concern lately, and eventually led to the passage of the Regulatory Flexibility Act in 1980, which I'll get to in just a minute.

I would like to provide for you, Mr. Chairman, a brief analytical model by which to assess the cases that you're hearing from this table and from the hearings in Peoria and Rockford. That is, small business faces really two major different kinds of regulatory burdens. The first is the burden that comes from a regulation which has been put into effect which may exert a rather unfair or high or disproportionate burden by itself, regardless of the good faith, the fairness, or unfairness of the bureaucrats who administer that regulation. Those burdens are then in effect by virtue of the regulation itself. The EPA regulations that Cummins Engine faces are there, and regardless of the good faith the bureaucrats who administer that regulation, those burdens are inextricably law.

So, we have first of all the case of a regulation imposing an unfair or or disproportionate burden in the hands of a fair bureaucrat. That will produce an unfair result. We, second, have the broad set of cases where a regulation can be of itself fair and one that we all would recognize may have some intrinsic benefit, but in the hands of an unfair bureaucrat who administers that regulation in an unfair way, or who enforces that regulation in an unfair way, will cause again an equally unfair result.

You will hear many examples of both, and I've included in my testimony examples of both of these. The DOE regulation promulgated in 1970 applying to nine categories of energy conservation appliances was an example of a regulation which would have imposed an unfair burden and good faith bureaucrats couldn't have done anything about that even if they would have wanted to.

The second type of regulatory burden is one that I would like to illustrate specifically by an example. It is the case where you might have a rather neutral looking regulation, but in the hands of unfair bureaucrats produces a terribly unfair result. In your own State of Illinois we have a company of which our office became aware called Design Trend, Inc. They import from Taiwan a roman-fold shade.

Senator PERCY. What is the name of the company?

Mr. METZGER. Design Trend, Inc., and I have a paper to give you on the case. Their specific product is subject to an import tax. There are two different kinds of taxes depending on how customs will classify that product. One set of regulations will classify it one way if it's a curtain or drape, and another way if it's made of plastic or a synthetic man-made-fiber. Well, this shade has plastic on one side and rayon on the other, but it is a curtain or drape, no doubt about it.

It would seem a simple task for a bureaucrat to simply look at it and determine which import tax applies. In this case, customs called it a product with manmade fibers in it and applied the import tax rate of 25 cents-a-pound and 17 percent of the product value. Unfortunately, Design Trend, Inc., has a competitor, a large business which imports the identical shade. Customs applied a different standard to this product for them, calling it a shade or curtain, and levied import tax on that same product of 6 percent only. Same product, two different companies, two different import taxes. That difference, that discrimination, has been going on now for a year, and Design Trend has been totally unable to get customs to decide which is the surface, and, hence, to classify it properly.

This discriminatory enforcement of a rather innocent or neutral import tax structure is an example of the latter type of regulatory burden, a discriminatory enforcement. You will want to listen to the cases that you hear. The lesson in that, I think, is that Congress must deal with those two regulatory problems in different ways.

The creation of fair regulations is a regulatory process, one which Congress, I believe, addressed in the establishment of the Regulatory Flexibility Act of 1980, that act which passed Congress without a dissenting vote in any subcommittee, in any committee, or on the floor of either house, and established basically a mechanism by which the regulatory considerations of small business must now by law be taken into consideration by Federal agencies.

Our office, the Office of Advocacy of the SBA, was put in charge of these amendments to the Administrative Procedure Act—which is the fundamental law which regulates all Federal rulemaking—and charged with monitoring compliance of that act by all the Federal agencies. And we do so with great zeal and with great support for the purposes of the act.

I would like to briefly state to you in summary of my testimony what the Office of Advocacy is and what we do. We administer the Regulatory Flexibility Act; we basically provide an ombudsman service to small business. That is, a small business which is affected by Federal regulations, in an adverse way, can call our office. We serve as a focal point for that complaint; we will represent that company before the Federal agencies. I would like to report that we nearly always get our man, or nearly always get our agency. And we work very hard on behalf of these small businesses and with a small band of Federal employees, stubbornly represent the interests of small businesses before Federal agencies. We have a string of successes, and we consider ourselves shock troops for small business nationally. We invite small businesses to write to us and to make known to us their problems.

In addition to that, we do research for small business. We also propose regulatory changes to the Congress, and that's why we're very happy to be before you today, and are, I believe, influential as well in the legislative process of drafting and reforming these regulations and laws.

I would like to point out that there have been other reforms as well in addition to the Regulatory Flexibility Act. The Paperwork Reduction Act, which is administered by the OMB, creates a second Federal budget. And before my small business companions panic, I would like to point out that that is a paperwork budget only which now is imposed on paperwork burdens. That is, we have an absolute ceiling on paperwork burdens. Agencies cannot increase those burdens without jumping through a certain series of procedural hoops.

In addition, I would also like to point out that in 1980 Congress passed a terribly important act for small business entitled the Equal Access to Justice Act. This act, which we're very concerned with, will become effective on October 1, and will reimburse small business expenses including attorney's fees when they successfully fight and conquer a Federal agency in court. That's good news for small business because the agency's fees will come directly out of their budget, and we hope, beginning October 1, the act will serve as a restraint on Federal agencies in suing small businesses.

I do not want to go any further, Mr. Chairman. I would like to turn it over to you for questions, if you have any.

Senator **Percy**. Thank you very much. We appreciate again your presence today. The first question before I ask you any direct questions, even though Mr. Norton and Mr. Castic haven't testified yet, I would like to ask them and our other panelists just one question because of its burden to small business.

Do any of you have any suggestions as to how we can involve the public more in the regulatory process, particularly, the public as it relates to small business? Is there a possibility that more widespread notice could be given of regulations that would have an impact on the public, that would have an impact on the consumer, that would have an impact on small business, on labor, and so forth, and allow them to comment in advance of that regulation being issued? Are there any suggestions you could make as to how you can avoid the frustration of suddenly being confronted with a regulation that affects you, that requires you to do a lot of labor in adhering to that regulation or a lot of research on what it means before it hits you?

Mr. Castic.

Mr. **Castic**. Yes, sir. Just as the attorney has stated, a lot of these Federal regulations are meant and designed with good intention, but the way the Federal employees interpret them and dish them out, they turn out to be something quite ugly and expensive, so it's difficult for the average person out on the street to know how the people who administer these Federal rulings will really interpret them, and then later on they're left with no recourse. They're shackled with something that is very cumbersome and expensive.

Senator **Percy**. Frequently, when we pass laws we find that after implementation, through regulations, we don't even recognize the law. At the end of a couple years of regulation, the regulators have carried it so much farther, beyond the scope that we had in mind; beyond the goal that we had for that particular provision.

Mr. Phillips, do you have any comments?

Mr. **Phillips**. He mentioned the fact that there will be a refund in the legal fees if the small businessman proves his point against an agency. I've heard of that before and it sounds great. The manufacturer, the small manufacturers, are organized into a small businessmen's group, I understand, and they're becoming more and more effective. It seems to me that allowing them the opportunity to communicate directly with the President on occasion and communicate directly with the Senate subcommittees that are involved with these regulatory agencies, because I'm sure they have plenty to say, and that might be one way to help prevent things from happening before they happen.

Senator PERCY. Mr. Klingner.

Mr. KLINGNER. I don't think I have any particular suggestions except meetings like this I think are greatly enlightening. But I agree that the interpretations of the law by the agencies seem to be the biggest problem. In other words, to us, or to me, maybe the law has good intentions, but the person who administers has an entirely different viewpoint.

And our chief problem has been that many of the agencies have acted as with veto power because they've interpreted the law to mean we've got the power. And if they do not act, then that affects another agency, so you sit for years and years to get a determination—whether something can go forward or not forward.

Senator PERCY. Mr. Norton.

Mr. NORTON. I think we're all in agreement that the intent of the regulation is fine, but it seems there is need to review later on, and to how you address that, I don't really have a suggestion, but I think it's a problem that should be given serious consideration.

Mr. METZGER. Mr. Chairman, I have a suggestion on that point. Not to be technical, but the Regulatory Flexibility Act did impose a major change in the way Federal agencies give notice to small business of regulations which are being proposed by Federal agencies. It used to be, prior to the passage of that act, that they would simply post the proposed regulation in the Federal Register, and it was the small business person's burden to read through the piles and piles and bales and bales that come out of the Federal Register to spot that particular regulation which affects you. Now, the agencies have an absolute legal duty to seek out small business individually as well as through their representatives and their trade publications.

It's now, believe it or not, to a small business person's advantage to register his/her name and address with an agency so that they place it on a mailing list, and they can mail you a copy of those proposed regulations when they come out, and we are encouraging agencies to build such lists.

Then there is a second burden on small businesses, and that is to comment on these proposed regulations. When you're absolutely opposed to them, say so in crisp, clear King's English, and that is a new development, and certainly one on which small business persons must and should follow up.

Senator PERCY. Another suggestion I would make along those lines, if you do see a regulation coming along that would have a really major adverse impact on your business, write the regulatory agency a letter and send a copy to me. Mark right on the face of it that you sent a copy to me, and many times that will cause them to call us or question us about it. Say what you think the impact would be, and we can give some interpretations on it as to whether we feel that it's at all necessary. Trying to prevent regulations being issued is the best thing we've found to do. That's in the Regulatory Reform Act of last year, and that's why we insisted on putting in—Senator Ribicoff and myself, who was then chairman of this committee—a requirement that there be a thorough analysis ahead of time. I think that would eliminate a tremendous number of regulations. The regulatory agency many times never realizes what the cost is going to be to implement that regulation and what the benefit is, and the Reagan administration has picked that up very strongly.

You did mention Reg Flex, and it's sort of like a football play, or something like that, this Regulatory Flexibility Act, which had such unanimous support. It does call for a 10-year review of the impact of all existing Federal rules on small businesses. Is that too long a timeframe in your judgment? Might it leave too much room for bureaucratic delay, or is the timeframe just about right?

Mr. **METZGER.** Speaking for myself now, and not as a representative of the administration, I firmly personally believe after working in the Office of Advocacy for 2 years, that that is too long a time. I don't believe an agency should be allowed 10 years to evaluate all of the regulations on the books. Just to briefly describe what Reg Flex does, it looks forward, and when a regulation is proposed now in a manner that affected small business. An initial regulatory impact analysis, what we affectionately call an IRFA, must be filed by that agency describing the impacts of that rule on small business, and then after those comments are in, what we affectionately call a FRFA, a final regulatory flexibility analysis, must be filed coping with those comments.

The act has the provision that you just mentioned, and that is in addition to looking forward, it looks back, and requires each agency to file a plan previewing how it will review all regulations; then it requires them to review all regulations in 10 years. I think that it's possible for an agency to marshall its resources to do that faster, and speaking personally I would ask each small business person in this room if he or she is comfortable with having the agencies take 10 years to perform that function. I doubt whether there are many businessmen who live on net 30 days who can afford to wait 10 years for that to happen.

Senator **PERCY.** In a sense, you describe your job as an ombudsman for small business. You have heard today complaints, asking how we get the attention of a regulatory agency, of a Government agency that has a power to adversely affect our business. Do you have any suggestions how Illinois businesses can get the attention of people in Washington when problems do arise for their company or their industry?

Mr. **METZGER.** People in Illinois have a unique advantage, Mr. Chairman, in that they have you as Senator and that is an asset which they should take advantage of vigorously. There is no doubt that your interest in the area of regulatory reform and the constant vigilance that your office and your staff have shown in working with the Office of Advocacy in the last few years bring a unique advantage to the people of this State.

In addition, and second to that advantage, I would say that we do have the Office of Advocacy in Washington armed now with some new legislation: the Regulatory Flexibility Act and the Equal Access to Justice Act. In addition to that, some other tools exist now about which you will hear from OMB, the Paperwork Reduction Act, and

Executive Order 12291, all bureaucratic titles for some very fancy laws which in their sum and in total will help small business.

I think small business must understand, that these laws do not operate by themselves. If small business goes to sleep today thinking that "everything is now under control—we've held this hearing in Illinois, all these acts which we heard about today which we didn't know about, are on the books, fine and great, I'm going to go to sleep and don't have to worry about it anymore," I can predict to you that very little will change in the East on the Potomac.

Small business as a community must maintain its vigilance, they must continue to write their Senators and Congressmen, they must continue to be informed of the work of the Office of Advocacy, and continue to write to us, and we solicit their comments and letters. So I think that in coping with these agencies, these new laws will provide a service provided that small business helps to make them work.

Senator PERCY. Thank you.

I'd like to ask this question while Mr. Metzger is still with us.

In your testimony, Mr. Castic and Mr. Norton, you have mentioned one problem that is universal, the problem of Federal inspectors. I would like to ask you whether in your judgment Federal inspectors understand the way that regulations that they're attempting to enforce actually do affect your business? Do they have much understanding of the technology limits under which you have to operate? I'll have to walk in the shoes of the Federal inspector. They don't have an easy job, no question about it, and they don't write the rules that they have to enforce. But do you have any suggestions as to how we could improve the performance of Federal inspectors on the job?

Mr. CASTIC. Well, sir, I think that by a better quality of inspector. Those that inspect our particular facilities, are not, in my opinion, qualified. They have no understanding of management. They did not come from management, or they did not come from engineering. They do not understand the ramifications that their orders and the powers that they have can do to not only our particular industry, but all the other industries that are networked into our product.

Consequently, it leaves everybody in a very tenuous position because of the—I say because they just assume more powers than what they are really entitled to.

Senator PERCY. Mr. Norton.

Mr. NORTON. We concur. I'm sure our testimony, that's already been submitted, addresses that. Specifically, the inspectors that are telling us how to run our operation, the requirement is 5 years experience, 5 years experience in the mining type business. That 5 years could be a front-end loader operator at a gravel pit. That would qualify him. He does not have responsibility to manage a work force. He doesn't have responsibility for profit or loss. He really has no concept of what it takes to keep a business operating.

Senator PERCY. Thank you. Mr. Metzger, this is the last question for you and we'll keep you right on schedule. Small business has complained through the years about the number of Federal forms that have to be filled out, and the cost involved to fill them out. They don't have departments that do that. Many times it's the small businessman sitting there night after night or weekends filling out this paperwork and he always is wondering not only why am I filling it out, but is it really necessary? Who is going to do anything about it?

We in Congress finally, in frustration, passed a Paperwork Reduction Act, which calls for a 25-percent reduction in Federal information collection requirements by 1983. David Stockman at OMB is cooperating fully in that. Can you give me a feeling as to whether that act is working? Do you think it will achieve the goal? What can we do to improve the situation, if anything?

Mr. METZGER. Well, I think the act is extremely valuable and long awaited. It is not of itself a total and instant solution. Certainly now the mechanism of that act is imposed through the chief budget authority that we have in Washington, the OMB, a powerful authority, as you well know, Mr. Chairman, over the problem of paperwork, and to treat it like dollars. We have now set, through OMB, some identified and quantified, levels of paperwork that each agency is allowed to impose on business, and small business in particular.

Now, once they wish to increase those, they must go to OMB and authorize a change in their own paperwork levels. In other words, if they have a form and they're at their level, and they want to introduce form B, they have to substitute B for A. They have to take something out when they put something in. Now, that is going to stabilize hopefully our paperwork levels. That will lead to some duty on the part of OMB to police this very carefully, and let me give you an example of some of the games which agencies know how to play.

If they are under a duty to cut their paperwork by half, one way to say that is that OMB must, for a while, deny half of all the requests that come into them for increased paperwork burdens. That sounds great. If you have a desk officer, however, at OMB that gets along with that agency very closely, he or she could have all of these requests come to him or her, deny all of them and send them back, then have all of them come back again and approve them. Since she or he approved only half of what came in its reported as a cut by 50 percent.

That's the kind of day to day policing which is going to be absolutely necessary and impose a real burden on OMB to prevent. If we can reach down to those sorts of practices and control them, you will see right down to the grass roots right here in Quincy real practical, measurable, reductions in paperwork burdens.

Another point on that line that I would like to just mention to you is that not only do we need to impose those levels, but eventually reduce them. We did just kind of an offhand analysis of the amount of burden hours that have surfaced as a result of this budget process of paperwork.

IRS imposes about 1.9 billion hours of paperwork burdens on small business, or in small business. If you divided those hours by the appropriate numbers to bring it down to bureaucratic levels of workload, if a bureaucrat read each one of those forms, one a minute—and that's not very long to sit with each one of those forms by the time you figure slitting open the envelope, putting it on a computer, shuffling it back and forth and shipping it from A to B and one side of the desk to another—1 minute spent on each one of those forms is going to result in about 4 million hours of bureaucratic time that has to be put into those papers.

That translates into a very large bureaucracy, or else it results in a lot of forms which aren't read. We need to begin to control those bales and bales of paperwork which are imposed on business, but not read by the Federal agencies, and eventually we will solve that problem as well, and I'm sure OMB has that target in mind.

Senator PERCY. I thank you very much indeed. Let me just give you a perspective on whether we've made any progress at all, just a few statistics. From 1970–80, in just 10 years, the expenditures at the Federal level for regulatory agencies quadrupled. And another index, the number of pages in the Federal Register, tripled in that 10-year period. Everyday there were three times as many pages coming out of the Federal Register as 10 years before.

Since the Reagan administration has come in since January, the number of rules published daily in the Federal Register have been cut in half and the number of pages is down one-third. So we are making progress. And I just simply want to say that Congress is standing—not solidly, because we have some opposition so it's not all like the Reg Flex law; we have some opposition—but we're standing pretty solidly behind this effort of the administration, and it's a great pleasure to work with an administration that is devoted to this aspect of our work.

I would like now to introduce two of our witnesses. Mr. Tom Castic is manager for the Illinois Mineral Co. in Elco, Ill. Mr. John Norton is president of Tammsco, Inc., in Tammsco, Ill. Both of the companies are engaged in the silicon extraction business in Alexander County in the southern tip of Illinois, which is known as Little Egypt.

They're rivals, I suppose. They're in the same business, and probably competitors in a sense, but they have a commonality of problems. And we will in just a moment ask you to summarize your testimony. But I know, to make your plane, you're going to have to leave, David, and I appreciate your being here very much indeed.

Mr. Castic.

Mr. CASTIC. What I'm about to say applies to both John Norton's plant, Tammsco, and the Illinois Mineral plant. The two Federal agencies which have created unnecessary and excessive compliance burdens for our industry are the Mine Safety and Health Administration, MSHA, and the National Institute for Occupational Safety and Health, NIOSH.

This year, Illinois Minerals has been averaging one inspection by a governmental regulatory agency every 4.8 work days. This includes both State and Federal inspectors who often run duplicate inspections.

Our product, silica flour, is a component of many products. A brief sampling of product categories utilizing silica include: protective coating, polyurethane elastomers, epoxy compounds, silicone rubber, ceramic glaze, polyester compounds, polyurethane foam, toothpaste, cosmetics, buffing compounds, polishing compounds, and a growing list of others far too long to enumerate.

I took the time to list the above because over 30 percent of our cost to produce our product is due to Federal regulations. Since everyone uses our product somewhere in their daily lives, extensive Federal regulations adds to inflation everywhere.

The Federal Government, through MSHA, uses these tactics to punish violators of their regulations. When they find a violation, they can come in and they then proceed to shut the plant down, to fine the company, and then force them to make costly, hasty, and unnecessary expenditures.

I mentioned earlier of dual inspections by State and Federal inspectors. I would like to enlarge on the difference. Because they work for the Federal Government, they seem to develop a gestapo-like attitude. I say this because when a small plant such as ours is invaded by as many as six or seven blue-uniformed men wearing MSHA helmets, you quickly get the feeling that you are producing a contraband substance and not an honest product as important in all of our lives.

MSHA inspectors are poorly qualified. We have never been inspected by anyone with a silica industry background. They do not have an understanding of management or engineering problems. They are not sufficiently prepared for the powers they are given.

MSHA inspectors can assume authority. By this I mean they can interpret the rules as they want them to be, not as they were intended. MSHA inspectors have the authority to write citations on the premise that they have reason to believe a violation has been committed. This gives them license to write citations regardless of proof. Each citation issued carries an immediate monetary fine.

The mining industry does not have a fair unbiased recourse. Should a company choose to go to Washington to present their case, they will never win. At least after a check with 14 mining companies here in southern Illinois, I have found that not a single company that fought their cases in Washington won. The deck was stacked, against them. I don't believe that there is any other Federal authority that has absolute power that MSHA has.

Our biggest complaint is that MSHA does not apply the Federal laws equally and uniformly throughout the silica industry. This puts the plants in southern Illinois at a competitive disadvantage. I can give many, but one example is as follows: At a hearing in Washington, D.C., on March 28, 1980, we were told that before we could again start production we must equip every man in our plant with a battery-powered respirator. We were assured that every plant nationwide that produces silica flour would be ordered to wear the same respirator. The respirator with accessories and installation cost approximately $500 each. On visits and through phone communications with competitive plants, we have found that only the two southern Illinois plants were given this order. All others were allowed to use an $8 respirator. There is a vast difference how silica plants are inspected and how the governing rules are interpreted from district to MSHA district.

MSHA and NIOSH do an extremely poor job of qualifying the equipment which they approve as safety devices. The expensive powered respirator which we were forced to purchase immediately proved to be very hazardous in plant use. This exotic, impressive instrument was force feeding silica dust into the lungs of our employees. The device was also self-destructing, for it forced so much silica through its mechanical parts that it would only operate for 2 weeks to 2 months.

Our alarm for the safety of our employees was immediate. However, our pleas to MSHA inspectors to investigate this equipment fell on deaf ears. The supervisor from Vincennes, Ind., stated "they are

MSHA and NIOSH approved. Nothing more need be said." The manufacturer and supplier was not interested in making a serious investigation of our complaint. They too felt that MSHA and NIOSH approval of their product removed them from all responsibility.

The position of management was this: We knew our people would be safer without any respirator. But the plant would be closed and fined if we did not comply with Federal orders.

By constantly complaining, NIOSH finally sent out a team of investigators. The two men were very objective in their study and made a thorough investigation. I understand that NIOSH officials were stunned by the results. They were quoted by the news media as saying "it shocks the hell out of us."

Our people no longer have to wear that type of respirator, but for the year that we were forced to use it, I am seriously concerned on how much damage might have been done to the lungs of our employees. We are stuck with thousands of dollars worth of useless equipment.

NIOSH uses sensationalism to gain recognition for their bureaucracy at the expense of the mining industry. For example, in August 1979, NIOSH spent over $500,000 making a study of the dust level in the plants of Illinois Mineral and Tammsco. The validity of this study is questioned by both companies. Nevertheless, NIOSH officials periodically make a news release of their findings as if it were a current study. The latest release was before the American Lung Association in Chicago on June 8, 1981. Following each release, local news media and others deluge us with calls for more facts. While the study is being used to proliferate NIOSH, it is damaging to the two companies that have spent hundreds of thousands of dollars on dust control.

This type of publicity affects our image with our customers, our position in the community and with our employees. It is also exploited by our competitors in their sales pitch.

Senator, if you can take the time to check with other mining interests in Illinois, you will find that their complaints are just as strong as ours.

You can help us all by considering these suggestions: Take the lead in presenting a bill in Congress that will limit the authority of MSHA, remove the system of punitive fines imposed on the mining industry, limit the number of inspections, upgrade the—and I underline the word *quality* of inspectors, give the mining industry a fair impartial court of review before any plants can be closed, let the worker share responsibility for his negligence on safety issues.

And I would also like to invite you, or someone on your staff, on Tuesday the 7th in Marion, Ill., at the Holiday Inn, the newly formed organization of local mining interest are having a meeting, and if you could possibly have someone from your staff from Carbondale sit in on it, I think you would——

Senator PERCY. That would be in Carbondale?

Mr. CASTIC. It will be in Marion at the Holiday Inn.

Senator PERCY. Well, we now have an office in Carbondale, and we'll see if we can't have our representative come to that meeting in Marion.

Mr. CASTIC. I believe much of what I said kind of fits in really well with the attorney previously.

Senator PERCY. Very good. Thank you.

Mr. Norton, Mr. Castic did mention that the worker should share responsibility for on-the-job accidents caused by his own negligence. I think back to my industrial days—thank heavens I was there before OSHA. I had 25 years in industry, and we had many dangerous operations. We had foundries, and pouring zinc, and aluminum, and dye casting. We had punch presses, we had the whole range of industrial equipment. But the best day I ever had was when I was given the award for 3 million man-hours of work performed without a single lost-time accident.

We had no regulations, no inspectors, the Federal Government never spent one nickel the whole time I was there for inspection on safety. We just did it because it was good business. We expected our workmen's compensation cost. You ran a shop safely because that was the best way to run it. I saw one man lose a finger. I was sitting next to him on a punch press, and I said we're never going to allow that to happen again, and we didn't. What could you suggest as to ways to, or give us examples, of how workers might sometimes intentionally or carelessly violate the safety rule that you have in a company for your own protection and because you think it's the right way to run an operation?

Mr. NORTON. The respirator is probably the most difficult to convince people to wear. It's surely not the most comportable thing in the world, but beyond the point of advising the worker of the hazards, bringing to his attention, the means by which the risk is minimized making available to him a multitude of respirators that are authorized to be worn that give the protection necessary. We feel that it has to be from a certain point thereon, the responsibility of the individual to protect his health. He has a responsibility to himself, he has a responsibility to his family, he has a responsibility to his community. We, as managers, can't necessarily be behind every piece of equipment making sure he isn't visiting with his buddy, has his respirator off, hanging around his neck. This is the type of worker responsibility I believe we're addressing here.

Senator PERCY. Right.

Mr. NORTON. I'm using respirators as an example, but it could be other safety infractions as well.

Senator PERCY. Fine.

Mr. Phillips, I know that you had a conversation with a member of my staff last week and brought to our attention a problem that I wasn't aware existed: Television and radio stations in Quincy are having trouble getting timely national weather bureau reports. Now, for farmers in the area, this is extraordinarily important. It's a fine public service that you offer, but you can't offer it much until you get the information. Can you tell us a little more about the problem, and are there any suggestions you'd have to make as to what I can do in Washington to help you straighten this out—a call to the weather bureau, or the Secretary of Commerce, certainly would, I hope, have some results. What can we do?

Mr. PHILLIPS. I don't really know. As I understand it, Paul Findley helped us as much as he could and went to the National Weather Bureau, and the problem is we need St. Louis Weather Bureau reports out of the State of Missouri because that's where the weather comes from—the southwest to the northeast. And, as it currently stands, they send it to Chicago, and then the State of Illinois' weather is distributed in this portion of Illinois. On the border the weather is delayed in many cases, and so we try to utilize the Missouri wire rather than the Illinois wire.

And it seemed like a simple thing to us, but it turned out it involved the Interstate Commerce Commission of the State of Missouri, the Interstate Commerce Commission of the State of Illinois, and the U.S. Interstate Commerce Commission, and between the three groups, all the rates of everyone in Missouri would have to be raised $40 a month if they allowed us to have a Missouri wire located in Quincy.

So it's a problem we're still working on, and, if you're interested, I'll dig out my file and go back, but we thought we were up against a brick wall, and we couldn't fight three regulatory agencies at the same time.

Senator PERCY. Well, we've got a new administration now. They like challenges. Let me talk to Mack Baldridge and just put it to him. If you can give me enough information so that I could personally submit it to them. I'll do it in cooperation with Governor Thompson and Paul Findley, but let's see if we can't resolve the problem then.

Mr. PHILLIPS. Frustrating for businessmen it seems like what's just commonsense. We ought to be able to do this, help us get good weather. You can't even do that.

Senator PERCY. OK. Fine.

Mr. PHILLIPS. Thank you for your interest, Mr. Senator.

Senator PERCY. Later this morning, Pete Censky, manager of the small business office of the Illinois Department of Commerce and Community Affairs, will talk about their onsite consultation service. The program does seem to go a long ways toward establishing an atmosphere of cooperation and compromise between Government and business. Mr. Castic and Mr. Norton, if both of you are able to stay to hear his testimony, or at least take a copy of it with you, and let me know after you've seen that testimony whether you ~~think~~ a Federal program similar to DCCA's onsite consultation service would work in your industry, it may present a good approach and a good idea. It sounds good to me. See if that might not be of assistance to you, and I'd appreciate very much hearing from you.

I do appreciate very much the panel being with us this morning, and I appreciate your also sitting on while we had our government testimony in your midst. And I thought David Metzger had a fine approach to it. I wish all Government officials were as responsive as he is and have the fresh point of view that he showed us today.

Thank you very much, gentlemen. We very much appreciate your being with us.

Mr. PHILLIPS. Senator, I would like to add it's nice to live in a country where you can have testimony like this where you can go home at night and sleep in your bed without worrying about somebody rousting you out and recriminating against the comments you just made against your Government.

Senator PERCY. It is. You know I wonder, Mr. Phillips, how many countries there are in the world where a process like this could actually occur. How many of you are attending the first U.S. Senate official public hearing that you have attended? Quite a few of you. But it is an amazing thing how few people in the World, relatively speaking, live under a government where they can sit and criticize the government, find fault with it, and have no recrimination whatsoever. In fact, you get more attention, I've always found. In this country, the spring that squeaks is the one that does get the oil, and we get more attention when we criticize than we do otherwise.

Mr. **Phillips**. Thank you, Senator.

Senator **Percy**. We'll take you with all of your records, and we hope to cut those down to the maximum extent possible.

Mr. **Phillip**. Thank you.

Senator **Percy**. Thank you.

[The prepared statements of Mr. Klingner, with attachments and supplement, Mr. Metzger, with attachments, Mr. Castic, and Mr. Norton follow:]

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June 11, 1981

Honorable Charles H. Percy
United States Senator
101 Senate Courts
Washington, D. C. 20510

Re: Senate Subcommittee Hearings
Unnecessary Government REgulations

Dear Senator Percy:

Pursuant to your invitation, we are herewith submitting a brief outline of our concerns relative to unnecessary government regulations. In order to best indicate the problems and time involved in compliance with regulations, we are submitting two major exhibits. Exhibit #1 is entitled "Indian Grave Drainage District Levee Raise, Adams County, Illinois", and Exhibit #2 is "Resume of Village of Kampsville Drought Relief Well". Both of these exhibits will indicate the problems associated with excessive Federal and State regulations.

Reference is made to the Indian Grave Drainage District. During the 1973 flood on the Mississippi River, a very great amount of expense, energy and man hours were expended by the Drainage District and local citizens in order to prevent flooding of approximately 20,000 acres of rich agricultural land which comprises the Indian Grave Drainage District. The lower 6 miles of levee was temporarily built up by sand bags, board fencing, hauling sand, etc. The area was saved only by the grace of God and by a breach of the Fabius River Levee which lies directly across the River. Soon after the flood, the landowners of the District requested our office to prepare plans and an estimate of cost for raising the District's levee with its own funds and without any governmental assistance whatsoever. This office made the necessary surveys and estimates of cost which at that time was in the neighborhood of $1,500,000. The landowners on a vote representing 67% of the land ordered the work to proceed. Bear in mind that the original levee which was to be raised is constructed on land owned in fee title by the Drainage District since approximately 1883. The original levee was originally constructed solely by the landowners at their expense for the purpose of protecting their homes and land. The attached resume illustrates the difficulty that was encountered in an attempt to protect their own homes on land owned by themselves and at their own expense. The end is not yet in sight. The regulations have been so time-consuming and dilatory, costs have meanwhile escalated to more than 3 times the original estimate. Construction is now very questionable.

Please read the resume, Exhibit I".

Exhibit #2 refers to a resume of the "Village of Kampsville, Illinois Drought Relief Well." In 1977, President Carter, with very good intentions, offered a program of Federal Grants to cities, towns, villages, etc., which were suffering from the 1976-77 drought for emergency drought relief water supplies. The Village of Kampsville, Illinois requested our assistance in installing an 8 inch well, approximately 50 feet deep in the gravel and sand strata lying along the Illinois River. The attached resume indicates the unbelieveable steps that had to be taken in order to construct an 8 inch well in the Illinois River Valley as an auxiliary supply for the Village. It took 2 years to sink the well approximately 50 feet deep as an emergency water supply, 2 years after the drought had expired.

Please check the resume, "Exhibit #2".

All of our projects involving Federal and State permits have been similarly, unduly delayed. Others that we can site are as follows:

1. Green Bay Levee and Drainage District No. 2, Iowa.

   This project was initiated under the Survey Authority of Congress, "Mississippi River Coon Rapids Dam to Ohio River, Levee Project Review", dated Dec. 11, 1969. The Green Bay study was initiated in June 1971. Since that date the Drainage District has been attempting to obtain the necessary permits to consummate this project. Special studies have been made by the Corps of Engineers with an agreement with the Department of Interior only to have the Department of Interior to back out on the agreement. Problems have arisen between the Department of the Interior, Division of Fish and Wildlife, the Department of Natural Resources of the State of Iowa, the Conservation Department of Illinois, the Environmental Protection Agency, and, of course, the Corps of Engineers. Recently, the Board of Engineers of Rivers and Harbors have endorsed the project with a recommendation for a 500 year levee design in lieu of a 200 year flood protection recommended in the Report. The Department of Interior now objects. We are now back to base 1 some 10 years after initiating the study.

2. A much needed sewage treatment plant for the City of Griggsville has been held up because of Federal requirements for an archaeological survey. Each time a suitable treatment site has been selected, it has been found to contain purportedly archaeological Indian artifacts of such significance as to require a new plant location. The City is now looking for a third site.

3. The Village of Ursa has been attempting to construct a sewage system and disposal plant only to find that it is unable to find a site which will not disturb Indian artifacts of significance. This project has been cooking for ten years. Thousands of engineering dollars have been spent, prices have escalated, and still construction not initiated.

4. The McGee Creek Levee and Drainage District Levee Project which is now under construction required nearly a year of negotiations between the Corps of Engineers, the Department of Conservation, State of Illinois, the Department of Interior, etc., before an acceptable plan could be worked out to allow levee repair after the April 15, 1979 levee breach and the formulation of an agreed plan for the reconstruction of the levee now under way. In fact, the area of some 12,000 acres was left open and subject to possible flooding from April 1979 to January of 1980.

The foregoing are just a few illustrated examples of time consuming delays, none of which have enhanced any of the projects, nor have they resulted in any apparent improvement of the ecology, environment, public health, welfare, or economic benefits.

Respectfully submitted,

William H. Klingner

William H. Klingner

WHK:ef

Attached: EXHIBIT I
EXHIBIT II

Attached - Resume of Wastewater Treatment Project
Griggsville, Illinois

EXHIBIT I

INDIAN GRAVE DRAINAGE DISTRICT - LEVEE RAISE

Date:	
7-10-75	Application for 404 Permit made to C. E.
7-15-75	Corps of Engineers acknowledged permit application.
7-24-75	Submitted copies of application to IDOT Division of Water Resources, and Ill. E.P.A.
7-28-75	Request from I.D.O.T., D.W.R. by letter to complete I.D.O.T., D.W.R. application.
10-2-75	I.D.O.T., D.W.R. application submitted.
11-4-75	Request for Plans to be sent to Illinois Department of Conservation, via letter from I.D.O.T., D.W.R. Permit being held until D.O.C. review.
11-10-75	Meeting with C.E. in Rock Island on project.
11-11-75	Maps and X-Section sent to I.D.O.C. for review.
12-29-75	Letter from I.D.O.T., D.W.R. enclosing a copy of a letter from I.D.O.C. dated December 10, 1975, setting forth 4 restrictions (we do not have a copy of I.D.O.C. letter in file). Also informing us Ill. E.P.A. had been contacted by I.D.O.T., D.W.R.
1-23-76	Our letter concurring in 4 restrictions by I.D.O.C. per letter of 12-10-75.
3-8-76	First Contact, by letter, from Ill. E.P.A., requiring a "Chapter 3 Permit".
3-15-76	Our letter requesting "Chapter 3 Permit", rules, regulations, forms, etc.
3-30-76	I.D.O.T., D.W.R. issued permit No. 14531, with expiration date of 12-31-79.
4-3-76	"Chapter 3 Permit" submitted to Ill. E.P.A.

Date	
4-15-76	District accepted Conditions and Permit No. 14531 issued by I.D.O.T., D.W.R.
5-5-76	Letter from Ill. E.P.A. requesting additional information.
5-29-76	Our reply to IEPA letter of 5-5-76.
6-10-76	Ill. E.P.A. issued permit No. 1976-EA-789-COP.
7-8-76	Our letter to C.E. stating that we have I.D.O.T. and Ill. E.P.A. permits, and assuming that 404 Permit from C.E. would be forthcoming. (1 year after application date).
7-16-76	Letter from I.E.P.A. to C.E. waiving requirement of Certification Under Section 401, PL92-500). Subject to applicants compliance with conditions set out therein. (Letter set out 4-conditions).
8-18-76	C.E. issued Public Notice on application. Comment period within 30 days of public notice or to 9-18-76.
9-3-76	Illinois Archaeological Survey and Ill. D.O.C. responded to Public Notice, letters forwarded to us by letters of C.E. on 9-13 and 9-15-76.
9-8-76	C.E. extended Public Notice comment period to 11-2-76.
9-16-76	U.S. EPA Responded to Public Notice, set forth 8 conditions under which they would not object to issuance of a permit. U.S.E.P.A. letter forwarded with C.E. letter 9-24-76.
9-27-76	Our reply to I.D.O.C. and Ill. Archaeological Survey letters of 9-3-76.
10-1-76	Letter from Ill. Arch. Survey, stating that they are forwarding information to K. Farnsworth, Archaeologist to determine if any further survey work need be done.
10-4-76	Our reply to US EPA in regard to their 8 conditions per their letter of 9-16-76.
10-27-76	I.D.O.C. reply to our letter of 9-27-76.
10-29-76	Letter from K. Farnsworth, Foundation for Archaeology, Kampsville, Ill. forwarded a proposal of costs for a site reconnaissance survey to C.E. Confirmed by letter of 11-1-76 from Ill. Arch. Survey.

Date	
11-2-76	Comment Period to Public Notice of 8-18-76, expired.
11-8-76	C.E. letter to Farnsworth returning proposal and directing him to send same to The Indian Grave District.
11-16-76	Proposal received post marked this date.
11-17-76	FIRST CONTACT from U. S. Fish and Wildlife Service. Letter requesting a meeting with F. & W.S. and I.D.O.C. (This after comment period expired.) (1 yr.-4 mo. after Application).
12-3-76	Our letter to F. & W.S. requesting dates for meeting.
12-3-76	I.D.O.C. inquired of C.E. at disposition of permit.
12-6-76	Letter from U.S. E.P.A. to C.E. requesting that permit be held in abeyance until concerns of U.S. E.P.A., F. & W.S. and I.D.O.C. have been resolved, following meeting with F. & W.S. and I.D.O.C.
12-13-76	Meeting with F. & W.S. and I.D.O.C. set for 1-20-77 at our office.
12-14-76	Our letter to K. Farnsworth, Kampsville, Ill., pointing out that District had no money for an Archeological Survey, but that he was welcome to perform same solely at the expense of his office.
1-11-77	Letter from Farnsworth to Ill. Arch. Survey in regard to need for Survey. (This was last we heard about a Survey).
1-20-77	Meeting with our office, F. & W.S., I.D.O.C., District Board and District's Attorney held at our office. (18 months after application for permit was submitted). Discussions were made to possibility of placing fill landward of the levee in certain areas and the possibility of obtaining fill material from areas they would like dredged. F. & W.S. was to furnish us maps marked where they would like dredged and areas they would like to place the fill landward of the levee. We were to review their request and comment prior to the F. & W.S. making their final demands.
1-28-77	Letter from U.S. E.P.A. to C.E. stating F. & W.S. had reported to them that at the meeting on 1-20-77 had resulted in an agreement. EPA would not object to issuing permit if F. & W.S. conditions are included (No Agreement was reached in the meeting on 1-20-77).

Date	
1-31-77	F. & W.S. wrote C.E. setting out 7 conditions they claim were agreed to at the meeting of 1-20-77. Actually only 1 of the conditions were agreed to. The marked up maps F. & W.S. was to submit to us for comment were never submitted. This letter forwarded to us via letter from C.E. 3/25/77.
4-8-77	Our letter or rebuttal to C.E. in regard to F.& W.S. letter of 1-31-77.
4-21-77	Memo. - C.E. Phone call in regard to meeting in Rock Island w./C.E., F. & W. S. and District.
6-8-77	Meeting at our office and in field with C.E., F. & W.S. and District.
6-10-77	Prints of X-Sections sent to F. & W.S. per our agreement at meeting on 6-8-77.
11-3-77	Letter from F. & W.S. submitting refinements to their original comments of 1-31-77.
1-23-78	Our letter of rebuttal to F. & W.S. letter of 11-3-77, agreeing to land side placement in two areas in lower portion of District and to all proposed borrow areas except Triangle Lake.
4-18-78	Our letter to F. & W.S. requesting status of review of our letter of 1-23-78.
5-15-78	Letter from F. & W.S. to C.E. requesting same conditions as letter of 11-3-77.
5-19-78	C.E. furnished us copy of F. & W.S. letter of 5-15-78.
6-6-78	Our letter of rebuttal to F.& W.S. letter of 5-15-78, to C.E. (Landside placement of fill in upper end and use of Triangle Lake for borrow are only unresolved questions).
6-30-78	Memo: - C.E. requested F. & W.S. respond to our letter of 6-6-78 by 7-14-78.
7-12-78	F. & W.S. letter to C.E. (We never received a copy of this letter.)
7-27-78	Our letter to C.E. asking if F. & W.S. had responded, if not would C.E. now issue permit.

Date	
8-4-78	F. & W.S. Letter to C.E. Reference made to F.& W.S. letter of 7-12-78 being in error, and that F. & W.S. appreciates the opportunity to correct the situation. F. & W.S. with-drew request to use Triangle Lake area for borrow. This letter forwarded to us by C.E. 8-11-78.
8-25-78	Our letter to C.E. in response to F. & W.S. area of 8-4-78 and C.E. letter of 8-11-78.
9-26-78	Meeting w/C.E. in Rock Island.
10-6-78	Our letter to F.&.W.S. pursuant to meeting 9/26/78.
11-22-78	F. & W.S. responded favorably to our letter of 10-2-78 via letter to C.E. (We do not have a copy of this letter).
1-19-79	Reported to Board that C.E. was in process of issuing permit.
2-14-79	C.E. issued 404 permit, expiration date 12-31-81 (3 Years, 7 mos. from date of application).
12-31-79	I.D.O.T., D.W.R. Permit expired.
5-19-80	Letter from I.D.O.T., D.W.R. stating permit had expired and requesting status of project or request for an extension of expiration date.
6-10-80	Our letter to I.D.O.T., D.W.R. requesting 3 year extension.
6-?-81	Received call from I.D.O.T., D.W.R. stating our letter of 6-10-80 had been lost in their office and just found. Wanted to know if we still wanted extension. We told them yes. D.W.R. is to issue an extension of expiration date.

EXHIBIT II

RESUME OF
VILLAGE OF KAMPSVILLE
DROUGHT RELIEF WELL

1.	Aug. 1977	Applied to FmHA for Drought Relief Funds.
2.	Aug. 30, 1977	Applied to Corps for Permit for Well and Water Line.
3.	Aug. 30, 1977	Submitted Plans and Easement Plats to Corps.
4.	Sept. 8, 1977	a) Informed we needed Report of Archeological Survey, also
		b) Letters of approval from appropriate environmental protection agencies. Contacted all agencies.
	ALSO,	c) Obtain concurrence of Illinois Department of Conservation. A copy of their concurrence must be submitted.
5.	Nov. 11, 1977	Sent all data requested by Department of Conservation.
	Dec. 2, 1977	Called Department of Conservation on status Dr. Kenny out till Monday. He was to return call. Called again Dec. 12 - out Called Dec. 13 and was told by his Secretary (Mary Jane) project had been referred to Ron Chezem. We sent letter Dec. 13, 1977. His office will call later today. Finally his office called Dec. 23 and stated expects sign-off Tuesday, Dec. 28.
6.	Dec. 20, 1977	Received Archeological Letter stating nothing of archeological significance.
7.	Jan. 10, 1978	Received sign-off from Department of Conservation.
8.	Jan. 17, 1978	All sent to Corps of January 17, 1978.
9.	Jan. 1978	Notified that U. S. Fish and Wildlife must review and agree to intended use of site for a well.
10.	Feb. 6, 1978 (Fill Requirements)	Corps notified must submit ENG. Form 4345 with approval from Illinois EPA and Illinois Department of Transportation - Division of Waterways. Also U. S. Fish & Wildlife and Illinois Department of Conservation (This is for approval to place fill).

11.	Feb. 1978	Requested EPA Permit for fill.
12.	Feb. 1978	Requested extension of time from FmHA.
13.	March 15, 1978 (Const. Permit:)	Submitted to Corps Construction Permit from Illinois EPA for well.
14.	March 1978	Corps stated separate legal description and plat for electric buried power line would be required.
15.	March 1978	Illinois Department of Transportation sent approved Highway Permit.
16.	April 25, 1978	Received copy of approved easement from Corps but not valid until Sec. 10, 1899 River and Harbor Act and Sec. 404, P.L. 92-500 conditions have been met and approved.
17.	May 10, 1978	Received extension of time till August 31, 1978 from FmHA.
18.	May 30, 1978	Received copy of Illinois EPA Permit dated May 23, 1978 for fill.
		Now waiting for approval of easement acquired, from FmHA and will advertise for bids.
19.	Aug. 30, 1978	FmHA approved their completed easement documents, and Rees Construction Company Contract Documents, but need a Co-Obligee Insurance Rider.
10.	Nov. 2, 1978	Issued notice to proceed to Rees Construction Company. 6 month completion time granted.
11.	Dec. 1978	Weather turned cold and snow in Mid-December 1978, so contractor had to stop work until Spring. Site flooded and was under water for three months in Spring and early Summer.
22.	Dec. 1978	Received extension of time for completion from FmHA until Aug. 30, 1979. Project was completed during August 1979.

June 18, 1981

Subject: Wastewater Treatment Project
City of Griggsville, Illinois

This project was initiated by the City on November 18, 1970 by entering into agreement with this office for preparation of a Preliminary Report setting forth needed improvements to the existing sewer system and treatment plant. Prior to completion of the report, the EPA construction grants program was developed, and the City became directly involved in an effort to meet the newly mandated environmental requirements, and to avail themselves of available funding programs.

The original estimated total project cost was $140,000, with estimated completion in 1973.

During the course of conducting the Step 1 planning, it was determined that rehabilitation of the sewer system was required in order to meet EPA requirements for Infiltration/Inflow. Thus, the project developed into a two phase project, namely Sewer System Rehabilitation and a new Treatment Facility.

To date, actual treatment plant design has not been authorized by EPA, and will not be, until completion of the rehabilitation phase, after which flow measurements will be taken and estimated design flows verified. Preliminary treatment plant design is required in order to prepare cost estimates and environmental assessments for the Step 1 Facilities Plan. Two preliminary treatment plant designs have been completed, both of which are unusable due to Archeological Sites which have been identified. Further preliminary treatment plant design is still necessary in order to find an acceptable plant site.

Presently the sewer rehabilitation phase of the project is under contract and will be completed this summer. The Facilities Plan has not been approved by EPA. Additional changes may be required depending on results of flow measurements taken after completion of rehabilitation work. No approvable treatment plant site has been established due to the archeological problems encountered.

The most recent project cost estimate is $908,000 with completion scheduled for the end of 1983. It is doubtful that the cost estimate is still valid, and completion becomes more doubtful with the continued archeological problems.

Since the project began the City's sewer use rates have doubled with further increases required to finance the local share of the project cost. The City to date has been unable to secure any commitment from FmHA to provide the necessary loan to cover the local share of cost.

The following is a chronological history of significant events which have occurred during the course of trying to complete this project.

June 18, 1981

HISTORY OF WASTEWATER TREATMENT PROJECT
CITY OF GRIGGSVILLE, ILLINOIS

1. November 18, 1970 - City and W. H. Klingner enter into agreement for preparation of a preliminary report for the construction of sewage treatment facilities (Cost $2,500.00)

2. August 31, 1972 - Submit "Project Completion Schedule" to IEPA. Estimated project completion date December 31, 1973.

3. January 2, 1973 - "Project Completion Schedule" returned to City by IEPA for correction and resubmittal.

4. April 13, 1973 - City submitted preapplication for State Grant under the anti-pollution bond act of 1970. Estimated project cost $140,000.

5. March 8, 1974 - City renewed grant application.

6. March 29, 1974 - IEPA sent City letter acknowledging preapplication submittal and indicated they would be given consideration in compiling Fiscal Year 1975 Project priority list.

7. September 16, 1974 - IEPA sent City letter informing them of the availability of Federal Grant Assistance for Step 1 work, and requesting that the City submit a new Federal Grant Application including an "estimated grant project schedule".

8. October 24, 1974 - City submitted Step 1 Documentation to IEPA.
   Estimated Cost - $4,000 Step 1
   Estimated Cost - $15,000 Step 2
   Estimated Cost - $200,000. Step 3
   Estimated project completion date Sept. 1, 1976.

9. October 24, 1974 - City submitted letter of intent and plan of study to State Clearinghouse for review.

10. November 5, 1975 - City submitted revised plan of study to State Clearinghouse for review.

11. November 11, 1974 - City submitted complete Step 1 Federal Grant Application to IEPA.

12. November 20, 1974 - State Clearinghouse, furnished City with sign-off letter for project with No Comment.

13. December 11, 1974 - City submitted State Clearinghouse Sign-off letter to IEPA.

14. December 19, 1974 - City submitted addendum to "Plan of Study" to IEPA.

15. January 13, 1975 - IEPA notified City that they had processed Step 1 Grant Application to USEPA indicating that the project is entitled to priority for Federal Assistance for a Step 1 Grant.

16. January 13, 1975 - IEPA furnished City copy of letter submitting project to USEPA.

17. February 7, 1975 - City submitted supplementary information for Step 1 project to USEPA in response to telephone request of Feb. 5, 1975.

18. April 17, 1975 - USEPA offered City a Step 1 Grant in the amount of $3,000. Grant was accepted by City.

19. June 3, 1975 - Environmental Assessment submitted to State Clearinghouse and IEPA for review.

20. June 3, 1975 - Preliminary Facility Plan submitted to IEPA for review.

21. June 9, 1975 - IEPA acknowledged receipt of Preliminary Facility Plan.

22. June 20, 1975 - Illinois State Clearinghouse submitted review letter to City indicating no conflict with any state agency.

23. June 25, 1975 - Illinois Department of Conservation submitted letter to State Clearinghouse expressing interest in project.

24. July 10, 1975 - Public Hearing held by City regarding project.

25. July 18, 1975 - Illinois State Clearinghouse forwarded letter from Illinois Department of Conservation to City with request for response.

26. August 14, 1975 - City response submitted to Illinois Department of Conservation.

27. August 14, 1975 - Letter from IEPA to City advising them that the proposed sewage works construction project can be processed under the State grants program upon completion of the Step 1 Facilities planning under the Federal Grant Program.

28. August 26, 1975 - Letter from Illinois Department of Conservation to State Clearinghouse advising them of no apparent significant conflicts between the project and programs of the department.

29. September 12, 1975 - Meeting held with IEPA officials to determine revisions required to complete Facilities Plan.

30. October 23, 1975 - IEPA letter to City requesting submission of complete Facilities Plan without delay.

31. October 27, 1975 - City submitted additional information required for Facilities Plan to IEPA, indicating need for completion of a "Sewer System Evaluation Survey".

32. November 3, 1975 - City requests additional Step 1 Grant funds for cost of SSES. Estimated Cost $20,000.

33. November 17, 1975 - City submitted to IEPA a breakdown of estimated cost for SSES as requested by IEPA.

34. December 4, 1975 - City submitted to IEPA Schedule of Completion as requested by IEPA.

35. December 16, 1975 - IEPA submitted Grant Increase request to USEPA for approval.

36. January 8, 1976 - USEPA offers Step 1 Grant increase to City to cover cost of SSES. Accepted by City.

37. February 11, 1976 - IEPA letter to City requesting that they expedite completion of Facilities Plan, to permit State grant funding of Step 2 and 3.

38. March 10, 1976 - USEPA letter to City approving grant payment of $1,500 for engineering services.

39. March 23, 1976 - Letter from City to IEPA advising that efforts being made to expedite schedule of completion for Facilities Plan as requested by IEPA letter of Feb. 11, 1976.

40. April 5, 1976 - Letter to IEPA advising of progress being made to complete Facilities Plan.

41. April 21, 1976 - City submit revised project completion schedule to IEPA.

42. June 9, 1976 - City submit revised project completion schedule to IEPA.

43. July 19, 1976 - City submitted "Facilities Plan" to IEPA.

44. July 19, 1976 - At IEPA request, additional information submitted by City to State Historic Preservation Officer, Illinois Department of Conservation.

45. July 23, 1976 - Letter from State Historic Preservation Officer of Illinois Department of Conservation indicating no adverse project impacts on architectural or historic sites.

46. August 6, 1976 - Letter from Staff Archeologist of Illinois Department of Conservation requesting information.

47. August 9, 1976 - Submitted information requested to Staff Archeologist, Illinois Department of Conservation.

48. August 18, 1976 - City submitted preapplication for Federal loan assistance to Farmer's Home Administration to fund local share of project cost. Funds requested $200,000.

49. August 24, 1976 - Letter from State Historic Preservation Officer, Illinois Department of Conservation requesting the City provide letter of agreement to provide an archeological survey of the project site.

50. October 4, 1976 - City submitted requested letter of agreement to the State Historic Preservation Officer to provide an archeological survey of the project site.

51. October 21, 1976 - IEPA letter to City advising that Facilities Plan must be amended and supplemented prior to approval.

52. October 28, 1976 - Meeting held with IEPA officials to determine additional requirements to obtain IEPA approval of Facilities Plan.

53. January 10, 1977 - City requested a proposal for the required archeological survey from Illinois Archeological Survey.

54. January 12, 1977 - Letter from Illinois Archeological Survey to Northwestern University requesting that they furnish a proposal to the City to perform the survey.

55. January 29, 1977 - Proposal for archeological survey from Northwestern University to City. Proposal accepted by City.

56. May 17, 1977 - Report of results of Archeological Survey by Northwestern University submitted to City, with indication that significant archeological site was discovered within project area.

57. February 23, 1978 - Letter from City to Engineer requesting status report on sewer project.

58. February 27, 1978 - Letter from Engineer to City reporting on status of project.

59. June 23, 1978 - Additional information for Facilities Plan submitted to IEPA.

60. September 20, 1978 - City request to IEPA for extension of budget period for Step 1 Grant.

61. October 19, 1978 - City request to USEPA for partial Step 1 Grant payment.

62. March 27, 1979 - IEPA letter to City advising them that additional documentation is required to permit them to complete their review of the Facilities Plan.

63. April 19, 1979 - Letter to IEPA advising them of City's intentions to provide the requested additional documentation.

64. May 30, 1979 - Additional documentation for Facilities Plan submitted to IEPA.

65. June 20, 1979 - Further additional documentation for Facilities Plan delivered to IEPA and discussed with IEPA officials.

66. July 27, 1979 - IEPA letter to City advising that State Step 2-3 Grant in the amount of $584,200 has been approved. City accepted grant offer, August 16, 1979.

67. August 20, 1979 - FmHA letter to City - authorizing a resubmittal of Pre-application for loan.

68. September 5, 1979 - Another Public Hearing held by City.

69. September 14, 1979 - City request to Northwestern University for proposal to excavate archeological site.

70. November 5, 1979 - Proposal from Northwestern University to City for excavation of Archeological Site - $34,471.00 (Not Grant eligible according to IEPA, therefore proposal not accepted by City.)

71. November 15, 1979 - Letter to Northwestern University rejecting proposal.

72. December 3, 1979 - Letter to Illinois State Clearinghouse for Step 2 review.

73. December 5, 1979 - Letter to Illinois Department of Conservation requesting Step 2 Signoff letter for sewer rehabilitation work.

74. December 6, 1979 - Submit pre Step 2 documentation to IEPA.

75. December 10, 1979 - Submit Preapplication for loan to FmHA. Request $350,000.

76. December 15, 1979 - Sign-off letter to City from Illinois Department of Conservation State Historic Preservation Officer for Sewer rehabilitation work only.

77. January 3, 1980 - Letter to City from State Clearinghouse indicating need for archeological survey.

78. January 17, 1980 - Submit IDOC sign-off letter to IEPA.

79. January 21, 1980 - Submit State Clearinghouse letter to IEPA.

80. March 14, 1980 - IEPA letter to USEPA providing update on project status.

81. April 4, 1980 - Submit additional pre-Step 2 documentation to IEPA.

82. April 21, 1980 - IEPA submit Step 2-3 Grant Amendment to City revising project completion schedule.

    Estimated completion date is now November 1983 at estimated cost of $908,000.

83. June 30, 1980 - Letter from IEPA to City indicating that City had failed to execute the grant amendment. City accepted amendment.

84. July 25, 1980 - Pre-step 3 documentation including Plans and Specifications for Sewer System Rehabilitation submitted to IEPA.

85. July 31, 1980 - Additional documentation submitted to FmHA for loan pre-application.

86. August 15, 1980 - Revised contract documents submitted to IEPA as per their telephone request.

87. August 29, 1980 - IEPA permit issued to City to construct Sewer System Rehabilitation.

88. September 4, 1980 - City made application to Illinois Department of Commerce for local share of cost for Sewer System Rehabilitation.

89. September 4, 1980 - R ceived Illinois Department of Transportation permit to construct Sewer System Rehabilitation across state right of way.

90. September 8, 1980 - FmHA notified City that project was not eligible for funding.

91. September 24, 1980 - City request to FmHA to reevaluate and reconsider project eligibility.

92. October 7, 1980 - FmHA notified City that project was eligible for funding and instructed City to submit formal application.

93. October 21, 1980 - Meeting held with FmHA officials to discuss loan application procedures and requirements.

94. November 20, 1980 - Request to Northwestern University for proposal to conduct another archeological survey at a revised project site.

95. December 5, 1980 - Proposal to City from Northwestern University to conduct archeological survey received.

96. December 12, 1980 - Submit additional pre-Step 3 documentation to IEPA.

97. December 18, 1980 - City acceptance letter to Northwestern University for archeological survey.

98. January 28, 1981 - IEPA authorization to City to proceed with Advertisement for Bids for Sewer System Rehabilitation.

99. January 29, 1981 - Status report to FmHA for loan application.

100. February 13, 1981 - Submittal of formal application for loan to FmHA along with all supporting documentation.

101. March 11, 1981 - City received bids for Sewer System Rehabilitation.

102. March 19, 1981 - Bids for Sewer System Rehabilitation submitted to IEPA for review.

103. April 17, 1981 - IEPA authorization to award contract for Sewer System Rehabilitation.

104. April 29, 1981 - Status report on project submitted to FmHA.

105. May 6, 1981 - Contract for Sewer System Rehabilitation executed with Contractor Notice to Proceed on or before May 18, 1981.

106. May 6, 1981 - FmHA acknowledged receipt of formal loan application and indicated funding availability for the project is in doubt.

107. May 27, 1981 - Submittal of executed contract documents by City to IEPA and FmHA.

108. May 27, 1981 - Report from Northwestern University to City for archeological survey. Report indicates significant archeological findings again within project boundaries. These findings are separate from original findings, and will require further revision of plans.

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July 1, 1981

SUPPLEMENT TO WRITTEN STATEMENT OF JUNE 11, 1981
TO SENATOR CHARLES H. PERCY - "UNNECESSARY GOVERNMENTAL REGULATIONS"

Honorable Charles H. Percy, U. S. Senator
4321 Dirksen Building
Washington, D. C. 20510

Re: Unnecessary Governmental Regulations

Dear Senator Percy:

Pursuant to your invitation of June 16, 1981, may I supplement my prepared statement as filed June 11, 1981 with the requested emphasis placed upon the particular Federal Rules, Regulations and or agencies which create excessive compliance burdens upon the public.

May I preface my remarks by first enumerating the legislative legacy of the seventies:

"National Environmental Policy Act, 1969; Clean Air Act Amendments, 1970; Water Pollution Control Act Amendments, 1972; Coastal Zone Management Act, 1972; Federal Insecticide, Fungicide and Rodenticide Act Amendments, 1972; Noise Control Act, 1972; Endangered Species Act, 1973; Safe Drinking Water Act, 1974; Federal Land Policy and Management Act, 1976; National Forest Management Act, 1976; Toxic Substances Control Act, 1976; Resource Conservation and Recovery Act, 1976; Surface Mining Control and Reclamation Act, 1977; and Clean Air Act Amendments, 1977."

Of course, not all the above Acts, as well as others not listed, are detrimental or unnecessarily burdensom. All were enacted with good intentions. I will attempt, however, to point out the major Acts which seem excessive in my line of work, that line being Engineering as it relates to Public Works and Agricultural interests.

1st. Section 404 of P.L. 92-500 "Federal Water Pollution Control Act Amendments and the Endangered Species Act of 1973. Regulations promulgated thereunder have been used to constitute the greatest impediments to progressive Water Resource Development, Highway, private and Public Municipal improvements and American productivity in the history of the United States.

Bills now pending which offer some relief to SECTION 404 are HR 393 by Congressman Paul, HR 3083 by Congressman Hall and S777 by Senators Tower and Bentsen.

I urge your Committee to make sure P.L. 92-500 applies only to Navigable Waters.

2nd. The U. S. Fish and Wildlife Coordination Act of 1958 as amended (16 U.S.C. 661 et seq) P.L.85-624 provides that wildlife conservarion receive equal consideration and be coordinated with other features of Water Resources Programs.

Sounds good and has merit, but should not, in effect, veto worthwhile projects.

My experience has been that the Department of the Interior through its Fish and Wildlife Department has been illogical and unreasonable in its demands for mitigated damages on Water Resources Projects and has in effect constituted a Veto power on otherwise sound projects.

3rd. Federal Water Recreational Act of 1965 provides full consideration be given to the opportunities of Recreation in all Water Resources Development.

The Act sounds reasonable and good. However, my experience has been that the recreational interests are over zealous of their new found power and often act as a deterrent. Some method must be found to expedite decisions.

4th. Water Resources Planning Act of 1965

The "Water Resources Council" seems to have engaged in Engineering Planning and not as a review policy Agency. It would appear to be an Agency for pigeon-holing worthwhile projects.

Personally, I'd like to see it abolished or as a compromise constituted as a review agency, which we do not need. At least it would not be a hindrance.

5th. National Environmental Policy Act of 1969

About all I can say about this Act is that it has cost me personally many thousands of dollars, as well as our Clients, by negating Water Resources Projects that otherwise were sound. The adverse environmental effects were and are a matter of debatable opinion. Projects have been stopped even after Congress authorized and appropriated initial construction funds. The Sponsors with their required Legal and Engineering obligations have been left high and dry.

To protect the environment is, of course, a major National policy, and should be. Hopefully, we can arrive at a determination of whose or what environment we are talking about.

May I suggest that the Act be toned down to more realistic goals.

6th. I am concerned and have some reservations on the need and execution of Executive Order 11296 dated August 11, 1966 and Executive Order 11988 dated 24 May 1977 as it pertains to the Upper Mississippi River.

These orders direct the Federal Agencies to manage Government lands in a manner to reduce flood loss, minimize human loss of life, promote safety, health and the welfare of the people.

Under this Authority and a host of other Acts, the C.O.E. plans to eliminate cabin leasing on the Upper Mississippi River by 1988.

The C.O.E. has no recourse other than to obey the dictates of Congress. Ample notice has been given by the C.O.E. and there are many good reasons why leasing should be phased out.

Nevertheless, I have a gut feeling that the action will not accomlish the desired results. Section 4 of the Flood Control Act of 1944 as amended seems reasonable to me. This Act authorized the Secretary of the Army to grant leases of lands of Water Resources Projects for such periods, and upon such terms and for such purposes as he may deem reasonable in the public interest.

May I suggest that your Honorable Committee look into these Acts to see if there are grounds for reconsideration, particularly on the Upper Mississippi River.

7th. P.L. 95-502 directs the Upper Mississippi River Basin Commission to prepare a Master Plan for management of the Upper Mississippi River by January 1, 1982 for review by Congress.

Existing Acts hereinabove recited which makes it necessary for the C.O.E. to obtain state approval for dredging or any other River project, now encumbers the permit process to such an extent that it is virtually impossible to obtain approval. It now takes in excess of 20 years to initiate, authorize, plan, appropriate funds and start construction on Federal Water Resources Projects.

May I urge your Honorable Committee and Congress to be on the look-out for a recommendation under P.L. 95-502 suggesting more Agencies, more reviews and still further built in delays.

This supplemental statement is filed as a personal presentation. However, I believe it embodies the basic beliefs and concerns of our Municipal Clients, the Agricultural Drainage Districts which our office represents as well as the Upper Mississippi Flood Control Association of which I am president.

It has been a privilege to make this statement. Thank you.

Very truly yours,

W. H. Klingner

W. H. Klingner

WHK:ef

Supplement to Statement of June 11, 1981

SBA
U.S. Small Business Administration
Washington, D.C. 20416

TESTIMONY
Before The
Senate Governmental Affairs Subcommittee on Energy,
Nuclear Proliferation and Government Processes
by
David P. Metzger, Special Counsel to the Chief Counsel for Advocacy
Quincy, ILL
Wednesday, July 1, 1981

Mr. Chairman, Members of the Subcommittees and Mayor Nuesson:

I am pleased to represent Michael Cardenas, Administrator of the Small Business Administration (SBA) and Acting Chief Counsel for Advocacy, Marshall J. Parker, to discuss with you today the subject of regulatory reform.

I. INTRODUCTION:

As a representative of the Office of Advocacy of the SBA, I would like to concentrate on the subject of the impact of federal regulations on small business. In particular, I would like to briefly describe the problems small business faces regarding federal regulation, the Office of Advocacy and its work on behalf of small business, and several recent developments in the area of regulatory reform. Of these, the most important are E.O. 12291, the Paperwork Reduction Act of 1980, the Regulatory Flexibility Act and the Equal Access to Justice Act. Since the Office of Management and Budget is most heavily involved in implementation of E.O. 12291 and the Paperwork Reduction Act, and since they will be testifying before you in Peoria, I will concentrate most heavily on the Regulatory Flexibility Act and the Equal Access to Justice Acts.

II. PROBLEMS OF SMALL BUSINESS WITH THE FEDERAL GOVERNMENT

Since regulatory reform will be effective only if it meets the needs and problems of business, and small business in particular, I would like to dwell on this problem briefly.

While regulation increases the cost of doing business for all businesses, regulation exerts a disproportionately harsher impact on small business. Small businesses and small entities repeatedly claim that uniform application of the same regulations to them and to larger entities produces economic injustice. Small business has tighter cash flow, smaller profit margins and a much smaller sales base over which to spread the cost of regulation. Because of this smaller sales base, small business will feel the cumulative effects of regulations faster and with harsher side effects than large business. Uniform application of federal regulations serves to increase the size of business that can effectively compete in a given marketplace. Office of Advocacy data tend to support this view. In 1963, the small business share of the GNP was 43%; by 1976 that share had dropped to 39% (Study by the Joel Popkin Company).

The ten year period, from 1970 to 1980, was a period of extremely high regulatory activity. A list of new agencies established during that ten year period possessing regulatory authority reveals the following:

Agency	Year Established
Environmental Protection Agency	1970
National Credit Union Administration	1970
Occupational Safety & Health Administration	1970
Occupational Safety and Health Review Commission	1970
Postal Rate Commission	1970
United States Postal Service (reorganized)	1970
ACTION	1971
Farm Credit Administration	1971
Consumer Product Safety Commission	1972
Board for International Broadcasting	1973
Commodity Futures Trading Commission	1974
Community Services Administration	1974
Federal Election Commission	1974
Nuclear Regulatory Agency	1974
Pension Benefit Guaranty Corporation	1974
National Transportation Safety Board	1975
Department of Energy	1977
Mine Safety and Health Administration	1977
Federal Labor Relations Authority	1978
International Communications Agency	1978
Office of Personnel Management	1978

Federal Emergency Management Agency	1979
U.S. International Development Cooperation Agency	1979
Department of Education	1980

Obviously, not every agency listed above is a problem for small business, but most are. The point of the list is that the number of directions from which business and small business in particular is regulated has increased dramatically in the last twenty years. The cumulative burden of regulations on small business has increased, and the result is a harsh, regressive and disproportionate regulatory burden on small business in the country.

This explosion on the part of regulatory agencies and hence regulatory activity in Washington has led to a deeply seated alienation of small business persons from the federal government--a disillusionment and distrust of our federal central government that we as federal employees would do well never to underestimate.

III. Office of Advocacy

Small businesses have unique problems in coping with these numerous and complex regulatory agencies. Small and medium-sized businesses have too few resources to cope with federal bureaucrats. They cannot afford high paid lawyers and lobbyists to argue for their special needs in Washington and they cannot take time off themselves to voice their concerns personally about specific regulatory impacts and problems.

In 1976, Congress created the Office of Advocacy headed by its Chief Counsel for Advocacy to serve as a national voice for small business in the federal government. The Office is charged with the task of representing small businesses on an individual case basis before federal agencies, developing proposals for regulatory policy changes by the federal agencies, recommending to Congress proposals for eliminating excessive or unnecessary regulation of small business and conducting research on behalf of small business. In addition, we conduct a regular communication program with small business.

A good example of the work of the Office of Advocacy is our work on the energy efficiency standards for nine categories of appliances proposed by the Department of Energy (DOE) in 1980. DOE let forty contracts and spent over $12 million to develop a standard to require appliance manufacturers to retool and produce more energy efficient appliances. (I am proud to add that the entire annual budget for the Chief Counsel and his staff of 75 small business advocates has never exceeded $6 million--or about half of that amount). On the face of the regulation, DOE candidly predicted that their proposed regulation would force out of business about 65% of the small manufacturers of appliances in the country, but took the position that this impact was acceptable. (Energy Conservation Program for Consumer Products, Federal Register 127, Volume 45 p. 43976 June 30, 1980.)

Furthermore, the DOE estimated that all of the small manufacturers of refrigerator/freezers would be put out of business due to an inability to finance compliance with the proposed regulations, a development referred to again by DOE as an acceptable impact. DOE predicted that all of the small manufacturers of ranges, ovens, waterheaters and room air conditioners would similarly be put out of business--again, according to DOE, an acceptable impact. DOE analyses showed that the firms most likely to be adversely affected were small firms.

The Office of Advocacy submitted testimony to the DOE on the proposed rule on August 12, 1980, arguing in effect that the need for energy efficiency in appliances was far outweighed in this case by the damage to productivity, to small manufacturers and ultimately to consumers that the rule would cause. The result of our extensive efforts in the matter is that the proposed rule is on permanent hold.

Advocacy files reflect a great many such cases in which we have helped small businesses and rules on which we have commented.

A more current and pending case regards the Consumer Product Safety Commission (CPSC). The owner of M and M Plastics, Inc., Mr. Glenn Morris, invented a dual purpose drug bottle cap. The cap is child-resistant on one side, and a conventional, easy-close cap on the other. Consumers have taken a great interest in it, primarily because while safety caps are needed, they are extremely hard to open, especially for the elderly. Yet, an elderly person who has children visiting can reverse these caps to prevent an accidental ingestion of adult medicine by children. The innovation acquired about 10% of the market share of the industry by 1978. According to our information, M and M's success prompted telephone complaints to the CPSC staff in January, 1979 to the CPSC staff in January, 1979 from two of the three largest competitors of M and M plastics.

Soon afterward, the CPSC staff reversed a position in the matter it had consistently taken since 1978, and proposed to eliminate these types of closures. The Office of Advocacy testified on June 16, 1981, before the Commission, strongly opposing the ban. In our opinion, the CPSC staff, in proposing the ban, is acting prematurely, on speculation and without the benefit of any hard evidence that these caps are unsafe. The case is still pending.

Regulatory Flexibility Act (RFA) P.L 96-354, 5 U.S.C. 601-612

In 1980, the Congress institutionalized the regulatory watchdog role of the Office of Advocacy by passage of the Regulatory Flexibility Act (P.L. 96-354).

The Act amended the Administrative Procedure Act (APA) requiring broadly that agencies analyze carefully regulations that significantly impact small business, publish the proposed impacts, consider alternatives to them, communicate these proposed burdensome regulations directly to small entities and small businesses and their trade publications and republish the rule with the small entities, including small entity comments. The Act is responsive to the well established need to require federal agencies to first identify and then take into consideration the impact of federal rulemaking on small business. The Act requires the Chief Counsel for small business to monitor compliance of the federal agencies with the Act, to submit to the President and to Congress an Annual Report on the effects of the Act. The Act also requires agencies to review the impact of rules currently on the books for their impact on small businesses and small entities.

Pursuant to the requirements of the RFA, the Office of Advocacy has a monitoring program in place, in which an Advocacy professional staff member monitors the rulemaking activity of federal agencies specifically assigned to him/her. The RFA became effective January 1, 1981, and to date, our Office has uncovered no regulation which would severely impact small business, to a degree which would trigger an intense reaction from our Office. We attribute this not just to the existence of the RFA, but also to President Reagan's freeze on final rulemaking which is currently still in effect. A complete description of the RFA and a text of the Act is contained in the short booklet enclosed with this testimony entitled the Regulatory Flexibility Act (Enclosure).

Executive Order 12291 and the Paperwork Reduction Act of 1980

The Regulatory Flexibility Act protects the interests only of small entities from adverse regulatory impacts. Complementing it is Executive Order 12291, issued by President Reagan on February 17, 1981. E.O. 12291 affects primarily rules with an annual effect on the economy of $100 million or more. The Executive Order sets forth a variety of requirements which agencies covered by the Order must meet in promulgating such regulations, including preparation of a cost benefit analysis of the proposed rule. The Executive Order also established the Task Force on Regulatory Relief, chaired by Vice-President Bush.

E.O. 12291 and the RFA complement each other to a great degree. The focus of the RFA is on small entities; the focus of the Order is on rules with a very large impact on the economy. Hence, under the two, all bases are covered. The Office of Advocacy is working closely with the OMB to coordinate both of these efforts and prevent duplication.

The same can be said for our efforts to reduce paperwork. The Office of Advocacy initiated a Paperwork Measurement and Reduction Project in 1979, which resulted in a report and recommendations to the Congress in January, 1980. Many of these recommendations were incorporated into the Paperwork Reduction Act of 1980. One of the chief results of that legislation is that we now have a second federal budget--one concerned with federal paperwork instead of dollars--which is administered by OMB. For the first time in history we have the means of controlling and ultimately reducing federal paperwork burdens on small business. The Office of Advocacy is working closely and cooperatively with the OMB to insure that small business, along with all other businesses, derive real and practical benefits from this legislation.

Equal Access to Justice Act P.L. 96-481, 5 USC 504

Rulemaking is not the only manner in which small business is adversely affected by a federal agency. Enforcement proceedings through the judicial process can be just as burdensome, or even more so. Advocacy files reveal several cases in which an enforcement agency, such as the FTC or CPSC adversely impacted a small business through costly enforcement proceeding.

At this point let me say that the Office of Advocacy fully supports prompt and full enforcement of the laws. The enforcement proceedings which lead to the passage of the Equal Access to Justice Act of 1980, and are of concern to us, as are those in which the agency was not substantially justified in bringing to court in the first place. In those cases, the small business person, as defined in the Act, may recover his attorney's fees, witness fees, costs of reports and analyses and other reasonable costs of success- fully conducting the litigation. The protections and provisions of the Act are not effective until October 1, 1981. We feel confident that this Act, when effective, will cause enforcement agencies to carefully review cases against small businesses before taking them to court, since a loss, and adverse decision on the question of fees will directly affect their budget.

Summary and Comments

Our nation's businesses, and small business have suffered immeasurably from the cumulative effects of regulations for many years. A few measures have been taken by Congress and this Administration to provide relief and assistance to their regulatory problems. But the burden continues to remain on all of us to continue to do more.

The role of Congress does not end with the passage of one or two bills. An attitude of vigilant and continued involvement is vital, and that is why you are to be commended, Mr. Chairman, for these hearings not only in Washington but in the field as well. The task of drafting, passing and implementing an omnibus Regulatory Reform bill, which encompasses all of the current needs not yet provided for in current legislation is an immense one. It is a task that should be undertaken with the needs of small businesses, as well as all business, in mind.

It is the responsibility of the Administration, and particularly the Office of Advocacy, the OMB, the Task Force on Regulatory Relief and all federal agencies to cooperate in every way to alleviate these regulatory burdens on business, and small business in particular. This is a clear call to arms for all federal agencies. Despite certain technical limits of Executive Orders in general, it is hoped that so called independent agencies heed this clear signal and cooperate not only with the implementation of the Reg Flex Act and the Executive Order, but with development of an Omnibus Regulatory Reform bill as well.

Finally, it is clear that small business, having suffered so much at the hands of federal regulations, but having come so far, cannot drift off to sleep now. It must continue to voice its concerns, continue to participate in hearings such as this series in Illinois, and continue to press for fair regulatory treatment from federal regulatory agencies.

Thank you. I will be happy to answer any questions you may have.

U. S. GOVERNMENT
SMALL BUSINESS ADMINISTRATION
REGION V

July 20, 1981

Mr. David Metzger
Office of Advocacy
Small Business Administration
1441 L Street, N.W.
Room 1010
Washington, D.C. 20416

Dear Dave:

Enclosed please find the Design Trends case that you expressed interest in. Hope you are able to do some good with Mr. Schifflin at Customs (FTS 566-8181).

Sincerely,

Gene Kraus
Regional Advocate

Enclosure

Chicago Regional Office, 219 S. Dearborn St., Chicago, Ill. 60604
Serving the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin

CASE NAME: Design Trend, Inc.

NAME OF OWNER: Kenneth Krugman

ADDRESS: 1737 South Michigan
Chicago, ILL 60616

PHONE: 312-786-0153

ATTORNEY: Paul Anderson
312-565-2000

Description of problem:

Design Trend, Inc. imports a valenced Roman-fold shade for windows. Their window shade has a rayon cloth surface on one side and a plastic surface on the other. The shade has horizontal plates built into it that operate as venetian blinds--and can be drawn like venetian blinds. The shade can be hung so that either side is exposed to the outside.

Determination of the import tariff depends on classification of the product by Customs Regulations, as interpreted by Customs bureaucrats as either a "curtain, drape or valence--Cloth," or as a "cover--manmade fibers." Cloth tariffs, governed by TSUS Schedule 7, part 12, subpart C, 772.35, are levied at the rate of 6% of the price paid for the good by the importer. Manmade fibers, governed by TSUS367.60, Schedule 3, part 5, subpart C, levy tariffs at the rate of $.25/lb plus 17% of the value paid by the importer. The classification is determined, according to the regulations, by looking to the surface.

For the past year, Customshas been unable to resolve the question of which side of this product is the surface for regulatory purposes. For the past year, Design Trend, Inc. has been paying the higher rate on imports of this product, and no decision has been rendered.

The product is manufactured by only one company in Taiwan. Two companies import it into the United States--one large company, and Design Trend, Inc. Design Trend, Inc. pays the higher rate--the large company pays the lower import tariff rate. This discriminatory levy has existed for over a year, Design Trend has lost an untold amount of attorneys fees trying to get an equitable resolution of the problem, and has lost the benefit of a great amount of money by paying the higher rate.

The status of the case, according to our caseworker in Chicago, is that Customs has referred the matter to New York for a decision.

February 24, 1981

Mr. Kenneth J. Krugman
President
Design Trend Inc.
1737 South Michigan Avenue
Chicago, Illinois 60616

Dear Ken:

Thank you for your letter. I am forwarding this to Bob Clairmont in our office in Washington. for his action.

The entire idea that the same product would be defined under two different tariff rates (the higher rate for the smaller company) strikes me as somewhat ludicrous.

We will certainly check this out and get back to you as soon as possible.

Sincerely,

Gene Kraus
Regional Advocate

cc: Bob Clairmont
Also letter & brief

312 - 786-0153

design trend INC.

1737 SOUTH MICHIGAN AVENUE, CHICAGO, ILLINOIS 60616

February 17, 1981

Small Business Administration
219 South Dearborn Street
Room: 838
Chicago, Illinois 60604

Attention: Mr. Gene Kraus

Dear Mr. Kraus,

Pursuant to our telephone conversation the following is a brief description of my tale of woe:

Due to a difference of opinion with the Chicago branch of the United States Custom Department concerning a product which we are presently importing I have had a very large and unjust financial burden put upon my company.

These additional costs have created a loss of profits along with our having to increase our selling price drastically thus irritating our customers and many many other adverse problems.

The procedure of protest open to us is costly, lengthly and most of all unfair. We must first file our protest to the individual who has already decided against us and wait until he has reviewed our protest, taking four to six months, before we may continue on to a higher level. We may not even ask how things are going or how long we will have to wait for an answer.

While all of this is going on please keep in mind that we have been considered guilty and our paying the additional costs.

Best of all we are also confronted with the situation of a very large company bringing the exact same product, made at the same factory as ours, thru the port of New York at the lesser duty rate.

We have protested this situation for the last seven months both by mail and telephone calls from our attorney. All of our protests have gone unanswered due to a constant change of personnel at the New York office.

Now we find Design Trend confronted with the unfortunate situation of having a product identical to the competitions but having to sell it at a higher price.

Mr. Kraus all I ask is that we find someway to get someone to hear our side of the story as quick as possible so that the high legal costs along with the large sums of cash I must put out per each shippment I receive does not put me out of business.

312 - 786-0153

design trend INC.

1737 SOUTH MICHIGAN AVENUE, CHICAGO, ILLINOIS 60616

I have enclosed with this letter a copy of our legal protest so as to give you an indication as to what I'm speaking of.

Thank you for your time.

Sincerely,

KENNETH J. KRUGMAN
PRESIDENT
DESIGN TREND INC.

KJK/kpk
Encl.

J. BRADLEY COLBURN
(1902-1979)

E. THOMAS HONEY*
JAMES H. LUNDQUIST
ROBERT E. BURKE

STEVEN P. SONNENBERG
MARK S. ZOLNO
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PAUL S. ANDERSON
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TEL. (202) 457-0300

COUNSEL
EDWIN F. RAINS*
MICHAEL STRAMIELLO, JR.*
THOMAS E. O'NEILL*
* NOT ADMITTED ILLINOIS

DRAFT

District Director of Customs
United States Custom House
610 South Canal Street
Chicago, Illinois 60607

Attn: Mr. John F. Tucker,
Import Specialist

Re: Classification of Valanced Roman Fold Shades

Dear Sir:

Pursuant to the United States Customs Regulations, Sec. 177.11, we hereby request an internal advice ruling as to the proper TSUS classification of "Valanced Roman Fold Window Shades" imported by our client, Design Trend, Inc. of Chicago, Illinois at the Port of Chicago.

NATURE OF THE PRODUCT

The imported window shades are of the type that are ordinarily used in a recreation room or back-porch enclosure. When fully extended, these shades exhibit a rayon cloth surface on one side, and a PVC coated surface on the other side. The shades contain several horizontal pleats, and can be drawn to all positions in much the same manner as Venetian blinds. The top portion of the shade contains a large piece of wood which is used to aid in the hanging of the shade. The shades can be placed so that either surface faces the room in which it is used, but normally the shades are placed so that the rayon cloth is exposed.

The component breakdown of the shades in terms of value is as follows:

Component	Percentage by Value
PVC	29%
Rayon cloth	25%
Wood	6%
Iron (hardware)	7%
Polyester	3%

The remainder of the value is comprised of packaging, labor, miscellaneous administrative expenses and profit. We hereby request that the above value information be considered as confidential and not be publicly disclosed. As is evident from this breakdown, the shades are in chief value of PVC, which is considered a rubber or plastic for purposes of classification under the TSUS.

A sample of the merchandise will be forwarded for your examination and review.

APPLICABLE STATUTES

The following TSUS provisions are relevant for purposes of the consideration of this request:

Schedule 7, Part 12, Subpart C:

Item	Articles	Rate of Duty
772.35	Curtains and drapes, including panels and valances; napkins, table covers, mats, scarves, runners, doilies, centerpieces, antimacassars, and furniture	

Item	Articles	Rate of Duty
	slip-covers; and like furnishings; all the foregoing of rubber or plastics........................	6% ad val.
	Schedule 3, Part 5, Subpart C:	
	Other furnishings, not ornamented:	
	* * *	
	Of man-made fibers:	
	* * *	
	Other:	
	* * *	
367.60	Other..................	25¢ per lb. + 17% ad val.

Headnotes to Schedule 3, TSUS:

5. For the purposes of parts 5, 6, and 7 of this schedule and parts 1 (except subpart A), 4, and 12 of schedule 7, in determining the classification of any article which is wholly or in part of a fabric coated or filled, or laminated, with nontransparent rubber or plastics (which fabric is provided for in part 4C of this schedule), the fabric shall be regarded not as a textile material but as being wholly of rubber or plastics to the extent that (as used in the article) the nontransparent rubber or plastics forms either the outer surface of such article or the only exposed surface of such fabric.

DISCUSSION

The two competing tariff items for the proper classification of the instant window shades are items 367.60 and 772.35. Absent the language of Headnote 5 to Schedule 3 dealing with the treatment, for tariff purposes, of laminated fabrics, the merchandise in question would most likely be classified under TSUS item 772.35 as "Curtains and drapes, including panels and valances, of rubber or plastics". Such provision would be the proper classification primarily for two reasons.

First, the window shades in question are in chief value of PVC which is considered a rubber or plastic for purposes of the TSUS. Based upon the decision in United States v. Canadian Vinyl Industries, Inc., 64 CCPA 97, C.A.D. 1189 (1977), and bearing in mind that the instant discussion focuses upon classification of the shades absent Headnote 5, Schedule 3, the shades would be properly classifiable under item 772.35, TSUS. That case held that sheets of material with a polyurethane "skin" on one side and nylon fabric on the reverse side, the chief value being the polyurethane, were properly classifiable under TSUS item 771.40 as rubber or plastic flexible sheets. The fabric from which the shades are manufactured is similar to the sheeting in that case in that one side of the material is rayon cloth with the reverse side having a PVC "skin", the chief value of the material being the PVC.

Secondly, TSUS item 772.35 specifically provides for the window shades in question with the language of "Curtains and drapes, including panels and valances; and like furnishings" (emphasis added), whereas the other provision, TSUS item 367.60, is a basket provision for "Other furnishings of man-made fibers". The latter provision does not specifically provide for the instant merchandise either by product description or by composition, as does item 772.35, TSUS. As a result, absent the language of Headnote 5, Schedule 3, it seems clear that the window shades would be classifiable under item 772.35.

With that prefatory discussion disposed of, the focus of this internal advice request finds itself squarely upon the phrase in Headnote 5 to Schedule 3 noting that a laminated fabric as provided for in Headnote 5 shall in certain cases be regarded not as of textile materials but as being "wholly of rubber or plastics to the extent that (as used in the article) the nontransparent rubber or plastics forms either the outer surface of such article or the only exposed surface of such fabric." (Emphasis added). The point warranting resolution is the standard which should properly govern as to the nature of an "outer surface" in products which are essentially reversible in nature and appear to have two distinct surfaces.

Articles such as jackets and tote bags which consist of a textile fabric laminated on the outside are easily discernible as to the outer surface of such article. In those cases, that portion of the article facing the outside when used in a normal fashion is the outer surface for purposes of Headnote 5. Neither product would be used in a manner so as to have the side normally thought of as the "outer surface" suddenly become the "inner surface".

In the instant case, the product in question is of an essentially reversible nature when the item is used in that manner intended, i.e., a shade which hangs from a window. There are two surfaces to the article which can be considered to be "outer", this in turn being wholly dependent upon which surface constitutes the "inner as implied by the comparative "outer".

Webster's New International Dictionary of the English Language, Second Edition (1961) at page 2537 defines the term "surface" as follows:

> 1. The exterior or outside of an object or body; the outermost or uppermost boundary; the face or faces of a three dimensioned thing;...
>
> 2. Something without depth; a mirror outside; superficial aspect; external appearance, characteristics, etc.

The term is also defined in Funk and Wagnall's New Comprehensive International Dictionary of the English Language, Encycloypedic Edition, (1978) at p. 1262 as "the exterior part or face of anything that has length, breadth, and thickness."

It is a well established principle of Customs Law that statutory language is to be taken in the context of its normal usage so as to preclude any anomalous or absurd results. United States v. Tropical Craft Corporation, 42 CCPA 223, C.A.D. 598 (1955), United States v. C. J. Tower & Sons, 44 CCPA 1, C.A.D. 626 (1956). The dictionary definition of a word is evidence of the normal usage and ordinary meaning of that word. United States v. C. J. Tower & Sons, supra. When the applicable dictionary definitions are considered as regards the term "surface", it is evident that both the rayon textile side and the laminated PVC side qualify as the "surface" in that they are the exterior portions of an object having length, breadth and thickness.

The term "outer" is defined in Webster's New International Dictionary, supra at p. 1732 as "Of, pertaining to, or being on the outside; external; farthest or farther from the interior, from a given station, or from any space or position regarded as a center or starting place;...". Since the language of the Headnote provides for the "outer surface", and it is evident according to the common construction of the word "surface" that both sides of the shade constitute the surface, either the vinyl side or the rayon fabric side, but not both, must constitute the "outer" surface since the statute is drafted in the comparative form.

There is no relevant case law or administrative ruling covering the applicable standard for determining the "outer surface for articles having two sides which constitute the surface, either of which is plainly visible under normal circumstances. The applicable legislative history provides little or no guidance in this regard. The legislative history for Headnote 5, Schedule 3, is found in the Tariff Schedules Technical Amendments Act of 1965, 79 Stat. 933, Pub. L. 89-241 (October, 1965). The accompanying Report of the Ways and Means Committee of the House of Representatives, H.R. Rep. No. 342, 89th Cong. 1st Sess. 13 (1965), at page 11 notes that the inner surface of an article is usually associated with being hidden or buried. Of course with the instant shades, there is no surface, as that term is defined, which could be considered to be inner, hidden or buried consonant with the intent of the legislative history.

Since no viable standard has been enunciated to date regarding reversible products and the nature of an "outer surface", we are of the opinion that the standard that should properly govern is that standard used for sheeting of the same material, which would be a chief value test based upon the decision in United States v. Canadian Vinyl Industries, supra.

In the event that the Canadian Vinyl decision is deemed inapplicable, the qualifying language to the phrase "outer surface" in Headnote 5, Schedule 3 must be examined. This language notes that "the fabric shall be regarded not as a textile material but as being wholly of rubber or plastics to the extent that (as used in the article) the nontransparent rubber or plastics forms either the outer surface...". As discussed, there is presently no applicable standard for a determination of the nature of the "outer surface" for products similar to the instant window shades. Therefore, absent such a directive, either surface could constitute the "outer surface". One (outer) surface of the shade clearly is composed of rubber or plastics in that PVC coating qualifies as a rubber or plastic under the Tariff Schedules of the United States.

Funk and Wagnall's New Comprehensive International Dictionary, supra, at p. 449 defines the term "extent" as:

> 1. The dimension or degree to which anything is extended; compass; reach; size; range; also, the limit to which anything reaches.
>
> 2. Size within given bounds;

As a result, the degree to which the PVC coating is extended constitutes one-half of the surface area of the shade in that one side is fully coated with the substance. A plain reading of the statutory language in Headnote 5, Schedule 3 then warrants the conclusion that one-half of the window shade is properly classifiable as a shade of rubber or plastics since the PVC side can be considered as the outer surface and the rubber or plastic (PVC) forms that surface. The shade would be of rubber or plastic to the extent that the PVC formed the outer surface. At the very least then, the one-half portion of the shade covered by the PVC coating should be classified under TSUS item 772.35.

A more logical result would be to classify the entire shade under item 772.35, TSUS, as classification under two tariff item numbers for this one product would be an absurd and anomalous result. As stated previously, statutory language is to be construed to avoid such anomalous results. United States v. Tropical Craft Corporation, supra, and United States v. C. J. Tower & Sons, supra. Both tariff item numbers in question provide for articles "of" certain components. Item 367.60 provides for furnishings "of man-made fibers", whereas item 772.35 provides for curtains and drapes, including panels and valances "of rubber or plastics".

The proper construction for the term "of" is found in the General Headnotes and Rules of Interpretation to the Tariff Schedules, No. 9(f)(i) noting that "'of' means that the article is wholly or in chief value of the named material." Since it has been shown that one side of the shade is to be treated as being composed of rubber or plastic, that both provisions are chief value provisions, and that the policy of avoiding absurd and anomalous results should prevail, the value of the PVC should predominate as it constitutes the chief value of the shade and therefore encompasses the entire value of the components of the shade.

For the foregoing reasons, and in the absence of any applicable standard regarding the nature of an "outer surface" for purposes of Schedule 3 relative to products which are reversible in nature, we are of the opinion that the instant window shades are properly classifiable under TSUS item 772.35 with duty at the rate of 6% ad valorem.

We would also like to request that after you have reviewed this internal advice request, we be afforded an opportunity to make an oral presentation and discuss any further questions that may arise.

Very truly yours,
BARNES, RICHARDSON & COLBURN
By:
Paul S. Anderson

PSA:cam
DES-001
cc: Mr. Kenneth J. Krugman, President

(618) 734-4172

ILLINOIS MINERALS CO.
2035 WASHINGTON AVE., CAIRO, ILLINOIS 62914

June 22, 1981

SENATE SUBCOMMITTEE HEARING

HONORABLE SENATOR PERCY, CHAIRMAN

My name is Tom Castic. I represent Illinois Minerals Company. Our corporate office is in Cairo, Illinois, and our plant is in Elco, Illinois. Our product is silica flour for which we have an international market. The plant has been in this location since 1911. We employ approximately sixty people.

The two federal agencies which have created unnecessary and excessive compliance burdens for our industry are the Mine Safety and Health Administration (MSHA) and The National Institute for Occupational Safety and Health (NIOSH).

This year, Illinois Minerals has been averaging one inspection by a governmental regulatory agency every 4.8 work days. This includes both state and federal inspectors who often run duplicate inspections.

The State of Illinois mine inspectors are polite, professional and firm, but fair.

By contrast, MSHA inspectors come to our facility and tell us how to mine our material, how it should be handled, how it should be milled, packaged, stored, and even loaded onto trucks and boxcars. This interference into our industry destroys our efficiency and adds excessive cost to our product. The MSHA employees who are dictating procedures to us do not have a silica processing background. Some of their procedures laid down to us create conflict with federal procedures imposed upon our customers in their locations. We are required to cover each pallet of silica with a $1.90 plastic shroud before it can be moved. However, plastic of this type can create static electricity which causes an explosion under certain conditions. We violate federal rules if we leave them on or take them off.

Since dust is our product, the more efficient we are in containing it through every step in processing and packaging, the more competitive our product can be on the world market. Therefore, we are constantly striving to apply the latest technology on dust control. Silica is an extremely abrasive material. It can wear away processing and transferring equipment rapidly. Consequently, to reduce maintenance problems and cost, we are relentless in our search for wear resistant material from which we can construct our equipment.

The major problem that we face is that the industries that supply us with equipment and materials do not have technology advanced to the degree that it will operate in our plant and meet the standards set forth by MSHA and NIOSH. For example: There is not a bagging machine on the market that is totally equipped with proper shrouds that is guaranteed to package our product and pass federal dust standards. Or, there is not a bag manufacturer that can construct bags that never break or leak while being filled with material less than eight microns in size. This holds true for every piece of equipment needed to process silica flour. There just is not the technology available on the market at this time that would enable us to totally comply with federal standards.

Governmental meddling has helped to severly weaken the giant American auto makers and allow foreign competition to overtake the leadership. Well, we are in worse shape. Small plants do not have the engineering staff to design, build and install the kind of equipment that the federal government demands. We are being forced to spend vast sums of money to reach a point that cannot be attained at the speed MSHA requires.

This hearing is being held to study the effect of federal regulations on the Illinois economy. However, the effects are far more reaching that just Illinois. They are world wide. The product of Illinois Minerals Company, silica, is a component of many products. A brief sampling of product catagories utilizing silica include: protective coating, polyurethane elastomers, epoxy compounds, silicone rubber, ceramic glaze, polyester compounds, polyurethane foam, toothpaste, cosmetics, buffing and polishing compounds and a growing list of others far too long to enumerate.

I took the time to list the above because 30% of our cost to produce our product is due to federal regulations. Since everyone uses our product in their daily lives, extensive federal regulations add to inflation everywhere.

This plant has been union organized since 1936. During all these years, not one single grievance has ever been brought before our Grievance Committee concerning safety or health related problems. Never the less, MSHA inspectors have shut this plant down four times in recent years, for a total of forty-three (43) days. The employees who were laid off went on unemployment, welfare or just suffered from lack of income. Illinois Minerals Company lost approximately $400,000 worth of business. Many of our loyal customers were forced to shut down also because we were forbidden to supply them with their needed materials. Foreign shipments were delayed, and the American image of being a reliable supplier was tarnished.

In addition to losing $400,000 worth of business, Illinois Minerals Company has spent $743,000 in recent years for safety and related equipment required by MSHA. $302,000 were spent in 1980 alone. Obviously, this cost eventually is passed on to the consumer.

The Federal Government, through MSHA, uses these tactics to punish violators of their regulations: shut the plant down, fine the company, then force them to make costly, hasty, unnecessary expenditures.

Ironically, during the National Emergency of WW II, 100% of the output of this plant went for national defense. Now the Federal Government is spending millions of dollars trying to force us out of business.

I mentioned earlier of dual inspections by state and federal inspectors. I would like to enlarge on the difference. Because they work for the federal government, they seem to develop a gestapo like attitude. I say this because when a small plant such as ours is invaded by as many as six or seven blue-uniformed men wearing MSHA helmets, you quickly get the feeling that you are producing a contraband substance, not an honest product so important in all of our lives.

MSHA inspectors are poorly qualified. We have never been inspected by anyone with a silica industry background. One requirement to be an MSHA inspector is to have worked at least five years in a mine or quarry. They do not have an understanding of management or engineering problems. They are not sufficiently prepared for the powers they are given.

MSHA inspectors can assume authority. By this I mean they can interpret the rules the way they want them to be, not as they were intended. MSHA inspectors have the authority to write citations on the premise that they have reason to believe a violation has been committed. This gives them license to write citations regardless of proof. Each citation issued carries an immediate monetary fine.

The mining industry does not have a fair unbiased recourse. Should a company choose to go to Washington to present their case, they will never win. At least after checking with 14 mining companies here in southern Illinois, I found that not a single company that fought their cases in Washington won. The deck was stacked against them. I don't believe that there is any other federal authority that has the absolute power that MSHA has.

Illinois Minerals Company's biggest complaint is that MSHA does not apply the federal laws equally and uniformly throughout the silica industry. This puts the plants in southern Illinois at a competitive disadvantage. I can give many, but one example is as follows: At a hearing in Washington D.C., on March 28, 1980, we were told that before we could again start production we must equip every man in our plant with a battery powered respirator. We were assured that every plant nationwide that produces silica flour would be ordered to wear the same respirator. The respirator with accessories and installation cost approximately $500 each. On visits and through phone communications with competitive plants, we found that only the two southern Illinois plants were given this order. All others were allowed to use an $8.00 respirator. There is a vast difference on how silica plants are inspected and how the governing rules are interpreted from district to MSHA district.

MSHA and NIOSH do an extremely poor job of qualifying equipment which they approve as safety devices. The expensive powered respirator that we were forced to purchase immediately proved to be very hazardous in plant use. This exotic, impressive instrument was force feeding silica dust into the lungs of our employees. The device was also self destructing, for it forced so much silica through its mechanical parts that it would only operate for two weeks to two months.

Our alarm for the safety of our employees was immediate. However, our pleas to MSHA inspectors to investigate this equipment fell on deaf ears. The supervisor from Vincennes, Indiana, stated "they are MSHA and NIOSH approved. Nothing more need be said." The manufacturer and supplier was not interested in making a serious investigation of our complaint. They too felt that MSHA and NIOSH approval of their product removed them from all responsibility.

The position that management was in was this: We knew our people would be safer without any respirator. But the plant would be closed and fined if we did not comply with federal orders.

By constantly complaining, NIOSH finally sent out a team of investigators. The two men were very objective in their study and made a thorough investigation. I understand that NIOSH officials were stunned by the results. They were quoted by the news media as saying "it shocks the hell out of us."

Our people no longer have to wear that type of respirator, but for the year that we were forced to use it, I am seriously concerned on how much damage might have been done to the lungs of our employees. We are stuck with thousands of dollars worth of useless equipment.

NIOSH uses sensationalism to gain recognition for their bureaucracy at the expense of the mining industry. For example, in August 1979, NIOSH spent over $500,000 making a study of the dust level in the plants of Illinois Minerals Company and Tammsco. The validity of this study is questioned by both companies. Never the less, NIOSH officials periodically make a new release of their findings as if it were a current study. The latest release was before the American Lung Association in Chicago on June 8, 1981. Following each release, local news media and others deluge us with calls for more facts. While the study is being used to proliferate NIOSH, it is damaging to the two companies that have spent hundreds of thousands of dollars on dust control.

This type of publicity affects our image with our customer, our position in the community and with our employees. It is also exploited by our competitors in their sales pitch.

Senator, it you can take the time to check with other mining interests in Illinois, you will find that their complaints are

June 22, 1981
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Senate Subcommittee Hearing

just as strong as ours.

You can help us all by considering these suggestions:

Take the lead in presenting a bill in congress that will limit the authority of MSHA.

Remove the system of punitive fines imposed on the mining industry.

Limit the number of inspections.

Upgrade the quality of inspectors.

Give the mining industry a fair impartial court of review before any plants can be closed.

Let the worker share responsibility for his negligence on safety issues.

Thank you for giving us the opportunity to present our problems.

PREPARED STATEMENT OF JOHN P. NORTON

At this time I wish to Thank-You for the opportunity to speak out on the issue of regulatory exess. I regret that it has become necessary to bring this matter to the attention of our elected representatives. Business conditions in our industry would warrant that this time be spent expanding sales demand for our products both foreign and domestic and I am sure many other issues of National importance await the attention of the members of this subcommittee.

IF there seemingly was minimal response,from industry for this hearing, I hope it is not attributable to the view of one of my co-workers who has become so paranoid from his contact with regulatory agents that he expects retaliation hereafter, and would prefer not to "make waves". I would perhaps share this view if it were not for the fact that Tammsco, Inc. is in its 9th year of a 10 year debt retirement obligation and the liquidation value of its assets are such that the balance due could be satisfied, if permananet closures were invoked.

I have attempted to relate our firm's experience, relative to a particular regulatory problem, in the document submitted in advance of this hearing and shall confine my remarks to those questions which I deem most important and worthy of this committees consideration. Questions common to all those handling respirable particulates.

Question: What course of action should be taken in a non-compliance situation if compliance is technologically not attainable?

Question: Should operations be allowed to continue if personnal protective devices are available that provide adequate worker protection from the hazard?

Question: If periodic medical examinations reveal no further degradation to the workers health, is it of any consequence that a non-compliance situation exits?

Question: In a non-compliance situation, who should decide whether an operation should cease or continue operations...should not the labor force have a voice in such a decision?

Question: What course of action should be taken in a non-compliance situation that is technologically attainable but economically impossible or impracticle?

Question: Should not owner/operator type business be excluded from health and safety regulation?

Question:Does not an individual share a responsibility to himself, his family and his community to protect his own health?

Question: Are we attempting to control, at a Federal level, a function that could be better handled at the State or local level?

Question: Is the Federal program for health and accident prevention,in its present form, accomplishing its goal?

Question: Does the benefit of the Federal program, for a hazard free working environment, warrant the cost which is borne by our entire nation? (Cost .=.Administration plus increase price of products to consumer).

In conclusion, I wish to describe myself as an energetic entreprenour who has been able to fulfill one of the dreams many Americans share....owning and operating a business of their own. Quite frankly I see this dream fading for those desirous of entering the business world. The personnal energy necessary to develop quality products, promote these products in the market place, and oversee the efficient production of these products, is becoming more and more consumed by the regulatory maze. Further I see these regulations helping to fuel inflation and escalate the cost of the products we manufacture to such a point that they too shall succumb to imports.

TAMMSCO, INC.

SECTION I

INFORMATION RELATIVE TO FEDERAL AGENCIES WHICH CREATE COMPLIANCE BURDENS FOR TAMMSCO, INC.

SECTION II

ISSUES AND COMMENTS

Submitted by: John P. Norton
President
TAMMSCO, INC.

TAMMSCO, INC.

TESTIMONY TO SENATE SUBCOMMITTEE ON EFFECT OF FEDERAL REGULATIONS ON THE ILLINOIS ECONOMY

Tammsco, Inc. transmits herewith comments on behalf of its employees, customers, suppliers and concerned citizens, regarding the regulations promulgated by the Mine Safety and Health Administration and their technical support group, the National Institute of Occupational Safety and Health.

Tammsco, Inc. mines and processes a mineral of limited occurrence locally referred to as silica; amorphous silica; tripoli or microcrystaline quartz. In Alexander and Union County Illinois, this mineral is found in nature as a friable rock-like formation; however silica is more often found in the form of sand elsewhere in Illinois and the world.

Silica is an indispensable ingredient in glass, an integral part of boat and automobile bodies, food and beverage containers, laboratory and hospital equipment, television tubes, eyeglasses and other optics and even windows for spacecraft. In ceramic products it is also an ingredient which becomes chinaware and porcelain, cooking ware, household appliances, pottery, bathroom fixtures, floor and wall lining. It is extensively used as an abrasive agent in the manufacture and maintenance of almost all kinds of structures, machines, and machinery components. Silica is an ingredient in household and industrial cleansers and paints. Nearly all industries in our complex civilization use silica in one way or another and for a great majority of these uses there are no known suitable substitutes, furthermore a rapidly developing export market is emerging which would affect our nations balance of trade.

The mining and processing of silica in Southern Illinois dates back to the early 1900's. The area has historically offered limited employment opportunity and consistently turns in the highest unemployment figures for all counties in Illinois. Although the silica manufacturing facilities combined employ less than one-hundred people the diversified markets for the product has enabled them to boast of not ever missing a pay day throughout good time or bad.

Tammsco, Inc. is an Illinois Corporation. Present ownership dates back to 1973. Prior to 1973 it had operated as a subsidiary of a larger corporation. My acquaintance with the operation began as an employee of the previous owner. I was aware that the reason for wanting to sell the business was its marginal profitability. The plant manager, a native of the area, who had in excess of thirty years experience mining and processing the silica, brought to my attention a few of his ideas which he felt would improve this situation and expressed his desire to enter into a co-operative venture. Fortunately for the two of us there were low interest, Small Business Administration, loans available spread over a ten year repayment schedule, which enabled us to finance nearly 83% of the $590,000.00 capital required. Personal loans were entered into to make up the balance. I believe this background information is important in that it puts in perspective the size of the operation and the fact that the only source of revenue is from profit from sale of products.

The value of the processed silica is directly proportional to its degree of fineness, with the sub-micron particles commanding the highest premium. However it is these particles that also pose a health hazard due to their ability to cause lung impairment, if sufficient quantity are inhaled and become entrapped therein.

Both of the aforementioned peculiarities of silica were recognized many years ago and the plants were equipped with the best available dust collection devices in an effort to maximize production efficiency and minimize the worker health hazard. The desire to capture each and every silica particle and put it in a package for sale in lieu of the working environment, was limited only by the technology available and the financial condition of the plants to implement newer innovations. Herein lies the crux of our present impasse with the Mine Safety and Health Administration.

Tammsco, Inc. has been inspected for safety and health by Federal and State agencies for many years. The safety record has been very good, the health record has been poor. Although the health hazard was recognized by workers and managers, over the years, a passive approach was taken whereby the worker was advised of the hazard, was provided with respiratory protection and was expected to be responsible for his own welfare. Although such an approach is totally unacceptable, to regulatory agencies, it is precisely the position taken by governmental agencies relative to tobacco and smoking which can be sighted as equally detremental to health and can be shown to enhance the probability of a respiratory ailment caused by airborne particulates as much as 100 fold. We firmly believe that is is impossible to improve the health and safety of workers by merely rule-making and administrative actions. The process must be one of education whereby a co-operative "want to" attitude is developed in the individual.

The regulations and standards applicable to silica processors are stated as follows: "the exposure to airborne contaminants shall not exceed, on the basis of a time weighted average, the threshold limit values adopted by the American Conference of Governmental Industrial Hygienists...". With 100% pure silica the allowable limit is expressed as .1 milligram per cubic meter of air over an eight (8) hour period. The average male, under a moderate work load, will breathe approximately twenty-two (22) cubic meters of air in an eight (8) hour work day. If this air contained .1 milligram of dust per cubic meter, a person would breathe 2.2 milligrams of dust in eight (8) hours or about 550 milligrams per fifty (50) week year. Expressed in ounces the amount would total .8 ounce in a forty (40) year working lifetime.

A program of dust level monitoring has recently been instituted by Tammsco, Inc. All previous respirable dust sample were collected by the Mine Safety and Health Administration. These samples indicate dust levels in excess of the allowable standard. However, a report published in the January 1981 issue of the American Industrial Hygiene Association Journal, which reviewed similar data for twenty-five other silica producers, concluded that all were above the MSHA standard and that no significant decline in silica dust levels occurred during the period (1974-1979) covered by the review. We believe this report to be extremely significant in as much as it highlights the fact that prevention of contamination, by engineering controls, is most difficult if not impossible; is not a problem peculiar to producers in Southern Illinois; and definitely does not warrant MSHA officials stating that there is a "callous disregard for worker health" at our place of business and boast of spending in excess of a "half million dollars" investigating the situation.

Beginning in 1978 and continuing thru 1980 an intensified effort to force compliance, at the silica plants in Southern Illinois, was embarked upon by the Mine Safety and Health Administration. Innumerable inspections were made by MSHA and NIOSH personnel, including six "engineering" surveys by the Denver Technical Support Center and a "health" survey by the National Institute of Safety and Health. Initially this program was a co-operative effort between plant personnel and technical support people to endeavor, by means of measurements, modifications and trial and error to attain dust level compliance. Enclosures were built around and between work areas; air velocities were increased and decreased; dust collection shrouds were modified; clean-up methods were altered; conveyors were added and subtracted; redesigned packages were tried; additional manpower was added for clean-up and repair, and the list goes on and on. By mid 1979 it became apparent that this program was rapidly escalating in cost, that the age of much of the plant equipment was such that no amount of repair and maintenance would correct the problem, short of complete replacement, and the success of everyones efforts were quite disappointing. It is also noteworthy that the plant manager of 37 years and co-owner, retired January 1, 1979, effecting a tremendous loss of talent as well as a drain on the cash fow of the corporation. Irregardless the Mine Safety and Health Administration believed not enough had been done to correct a non-compliance problem and in October issued one of several withdrawal orders and invoked several thousand dollars in additional fines.

At this point in time (October 1979) the level of exposure is estimated to be on an average of 4 to 5 times the allowable limit. A mandatory respiratory protection program had begun and a decision had been made to advertize the business for sale as it was quite obvious compliance was not only a long term proposition but conceivably an impossibility. Estimates had been made of the additional investments which, so far as predictable, would have to be made in an effort to further reduce existing dust levels to the threshold limit value of silica. In no case have the people who have made these estimates, who are thoroughly familiar with plant operations and current industrial ventilation techniques, been optimistic that the TLV can be met. A number of ventilation engineers share this view. Some have said that an entirely new and as yet unproven ventilation technology must be developed to achieve the dust concentrations required by MSHA.

In March of 1980 a four week closure order was issued by MSHA. Conditions for reopening dictated the purchase of $500.00 apiece powered air respirators in addition to the following:

1. Clean-up mill as necessary to maintain adequate cleanliness to prevent silica from becoming airborne, spills will be cleaned up immediately after thoroughly wetting down.

2. Leaks will be repaired immediately upon discovery.

3. The mill will be inspected by a supervisor for leaks or spillage prior to the start of each shift and periodically throughout the shift including bags and baghouse.

4. A catch basin will be positioned at the bottom of each bagging machine.

5. A new palletizing system will be in use by August 15, 1980.

6. Pallets will be wrapped in plastic before movement to warehouse.

7. Dust collection equipment will be maintained in the crusher room and throughout the plant.

8. Shrouds will be installed and maintained on all bagging machines.

9. Spilled product will not be allowed to accumulate in the mill yard.

10. Lunchroom will be pressurized.

This plan would appear to be workable however; the respirators proved to be ineffective, customers refused to accept plastic wrapped pallets, some equipment could not be started and stopped indiscrimately for repair and "preventing silica from becoming airborne" was a matter of opinion since the size of a respirable particle of silica is to small to be seen. This plan also granted MSHA authority to issue subsequent withdrawal orders for any violation of the so called "dust control plan" without regard to whether or not non-compliance with the dust standard existed.

After experiencing the issuance of withdrawal orders, at the whim of an inspector, based on the aforementioned premise, it became apparent that management and labor had lost complete control of this production facility. By late August of 1980 serious thought was given to liquidating the business. Response to advertisements offering the business for sale was good however; interest waned when the potential buyer became aware of the regulatory situation. Some estimates were obtained relative to the liquidation value of the Company assets and the business agent for the union was advised of the prospect of permanent plant closure.

Discussions with employees, union representatives and local concerned citizens, provided the encouragement to make one last attempt to resolve the impasse by accepting an invitation from Congressman Paul Simon to meet at his Washington, D.C. offices for a conference between MSHA representatives, Tammsco management representatives and Tammsco labor representatives. This meeting was held on September 25th, 1980 at which time a "dust compliance plan" was submitted to MSHA by Tammsco,Inc. (see copy attached). Subsequent to this meeting MSHA was asked to give consideration to the following request: If it is decided that the health of our workers can best be served by a permanent closure order, Tammsco believes the welfare of those workers should be considered to the extent that the effective date of such an order provide ample time for them to seek alternative employment. This time frame would also provide, for the multitude of consumers of the silica products, to align themselves with alternative sources of supply.

The foregoing information was taken under advisement by the Mine Safety and Health Administration and we are currently awaiting their decision.

Exhibit A

SHEET 1 OF ______
PLANT ______
PROJ. NO. ______
TITLE COST TO UPGRADE PRODUCTION
TAMMSCO INC, SILICA FASILITY
DATE 6/20/80
BY RDS & CAM

PRELIMINARY

	PHASE I 80-110 T/D	PHASE II 110-160 T/D	TOTALS
A. ENVIRONMENTAL			
1. RENOVATE PRESENT DUST COLLECTION SYSTEM	$250 m		
2. ULTIMATE DUST CONTROL SYSTEM		350 m	
TOTAL	250 m	350 m	600 m
B. MILL PRODUCTION CAPACITY			
1. CENTRAL VACUUM SYSTEM	100		
2. IMPROVE BAGGING SYSTEMS	25	25	
3. RENOVATE & UPGRADE ROTARY DRYER	200		
4. UPGRADE ELECTRICAL SYSTEM	100		
5. DRAINS, PIPE & SETTLING POND	50		
6. UPGRADE CATWALKS, LADDERS, STAIRS	50		
7. ADD'L MILL, AIR SEPARATOR, STORAGE & BAGGING		800	
8 UPGRADE CRUSHING CAPACITY		100	
9 NOISE CONTROL ENCLOSURES	50	50	
	575 m	975 m	1,550 m
C. MINE PRODUCTION CAPACITY			
1. MATERIAL HANDLING - MINE TO SURFACE	50	50	
2. UPGRADE MINE LIGHTING	25	25	
3. UPGRADE MINE VENTILATION	50		
4. TRANSPORT LOADING HOPPER	50		
5 TRANSPORT LOADING DUST CONTROL	30		
6. ADD'L TRANSPORT TRUCK	25		
7 MINE EQUIPMENT EXHAUST CONVERTORS	5		
	235 m	75 m	310 m
GRAND TOTALS	1,060 m	1,400 m	2,460 m

Tammsco, Inc.

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(616) 445-3261

Customer Service:
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Tamms, Illinois 62988
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September 23, 1980

TAMMSCO DUST COMPLIANCE PLAN

By means of inspection, repair and clean-up, dust levels will be maintained at or below conditions existing at the onset of the Mine Safety and Health Administration PAR program (September 1980).

Above dust levels will be monitored by equipment specifically designed for measuring respirable dust and under the supervision of a nuetral party.

Efforts to bring the plant into dust standard compliance will continue. An overview of the plan to accomplish this is marked exhibit A and attached hereto.

Respiratory protection will be provided and the respirator program will be consistent with American National Standards Institute requirements for a respiratory protective program.

TAMMSCO, INC.

TESTIMONY TO SENATE SUBCOMMITTEE ON EFFECT OF FEDERAL REGULATIONS ON THE ILLINOIS ECONOMY

ISSUES AND COMMENTS

ISSUE: The Mine Safety and Health Administration is attempting to "force technology" in their effort to require employers to provide workplace free of hazards.

Comment: In an effort to "force technology" the manufacturing facility becomes a Federal expirimental station operated at the employers expense and "good faith" is measured by the amount of monies spent towards health and safety inputs. When a company runs out of money they also run out of "good faith".

A workplace "free of hazards" may be an unattainable goal with todays technology or may represent a goal that if attained precludes the facility from operating at a profit. Such consideration is not in the realm of discussion with this agency.

ISSUE: The Mine Safety and Health Administration inspectors should be better qualified and frequently go about their work as though they were the secret police of a dictatorial government. We are inspected all hours of the day and night via the front door, back door or other means of access that could be deemed unsuspect.

Comment: Qualifications for the job of MSHA inspector is principally prior mining experience. This could be no more than a front-end loader operator in a gravel pit. Qualifications should include supervisory experience at a level where knowledge of managing a work force with the responsibility of operating the business entity at a profit is necessary.

ISSUE: The Mine Safety and Health Administration does not place an obligation on the worker to comply with the act or do they have an educational program geared to the worker.

Comment: Any and all violations of the act result in a citation and automatic fine for the employer even if a worker inadvertently violates a safety and health standard. In the case of dust exposures, smokers are nearly 100 times more likely to develop lung impairment than nonsmokers however; there is no program to "find ways to help these workers stop smoking". We believe workers, particularly where there is union representation, should have input into safety and health matters. It is not possible to "order" safety and health. It is a matter of education and a "want to" attitude on the part of the individual.

ISSUE: The Mine Safety and Health Administration assumes authority beyond that which is specified in their regulations.

Comment: Our facility has been cited for violation of Section 57.5-5 which reads as follows: "Control of employee exposure to harmful airborne contaminants shall be, insofar as feasible, by prevention of contamination, ISSUES AND COMMENTS - Continued

removal by exhaust ventilation or by dilution with uncontaminated air". Inspectors have construed the interpretation of such statements as "prevention of contamination" to agree with their opinion without regard to facts supporting their position.

ISSUE: The Mine Safety and Health Administration does not provide for the inevitability of a non-compliance situation that may be insolvable by engineering controls.

Comment: In April of 1980 the Mine Safety and Health Administration dictated that a specific type respirator be worn, plus certain maintenance and operational functions be performed at our facility. Until compliance with Section 57.5-1 was attained, we were required to write up their plan and submit it to their agency as "The Company Respirable Dust Control Plan". Subsequently the respirators were deemed ineffective and certain required functions were not compatible with our operation. The company drafted and alternative plan and presented it to MSHA officials in September 1980. No response was ever received.

ISSUE: Safety and Health is regulated by both Federal and State agencies.

Comment: There is duplication of effort and excessive cost to the public. We are unable to find data which would indicate a trend toward reducing workplace accidents as a result of the efforts of regulatory agencies. We are not advocating abolition of all efforts to improve the working environment however; on a Federal level OSHA and MSHA could be consolidated and either the State of Illinois or MSHA could effectively monitor workplace safety and health. From experience we have found the State agency to be more knowledgeable and better able to bring to our attention those practices which may improve the working environment.

ISSUE: The National Institute of Occupational Health is inaccurate with their reports and uses sensationalism to gain recognition of their work.

Comment: In the case of the NIOSH "approved" respirators, which proved ineffective, it was learned that these devices were tested under laboratory conditions, not in actual use. NIOSH officials have been quoted by the news media as saying "It shocks the hell out of me".

ISSUE: The Mine Safety and Health Administration uses a counterproductive system of penalties to enforce their regulations.

Comment: More often than not the solution to providing a workplace free of hazards involves a monitary investment. Our American system of economic endeavor relies on the sale of goods and services to generate monies in excess of cost of production to accomplish this goal. Fines, closure orders and court cases consume the time, talent and capital that should be directed towards a solution to the problem. We estimate at least $100,000.00 was consumed in 1980 in fines, legal fees, lost production and inefficient operation and an immeasurable amount of earning power is in jeopardy due to our lack of credibility as a dependable supplier. In some instances customer plants were closed for lack of our product.

ISSUES AND COMMENTS - Continued

ISSUE: The Occupational Safety and Health Administration exceeds the Legislature intent of Congress thru rule-making and administrative actions.

Comment: We believe the intent of Congress was to create an agency of government to assist labor/management groups throughout industry to establish uniform guidelines for a safer and healthier working environment, particularly in those situations where the voice of the working man, relative to these matters, may otherwise go unheard. MSHA has extended this authority to include operations with no employees. If Tammsco, Inc. were scaled down to a one man operation where the owner was the operator, MSHA regulations would usurp this individuals right to earn a livlihood.

ISSUE: The Mine Safety and Health Administration does not enforce their regulations uniformly.

Comment: We are in touch with other producers of silica by telephone and personnal visitation. None have been subjected to closure orders; were ordered to use powered air respirators; changed their method of clean-up; had NIOSH health surveys or a multitude of other requirements.

Senator Percy. Our panel, Mr. Richard Ruzich, Mr. Jim Weisenborn, and we have Ms. Lucinda Awerkamp, and Mr. Paul Brown, if you could all come to the witness table please. And Soyland Power Cooperative will be represented by Ms. Patricia Reynolds, administrative assistant for Soyland Power Cooperative. I want to thank you for being here to present your testimony. We greatly appreciate your patience in waiting until now to testify.

I'm sorry that Mr. Metzger, as I said, had to leave, but he will, I know, carefully consider your testimony. He has promised to review the entire record. Mr. Ruzich, I've asked my staff to invite you to testify at this hearing after we saw your editorial in the Quincy Herald. I should add that while the editorial described the incredible difficulties your company has had in trying to build a powerplant in Pike County just south of here, I understand you had to cope with 170 separate Federal, State, and local agencies, and I expect thousands of separate regulations in what must have been a seemingly endless problem. Mr. Ruzich is represented today by Ms. Reynolds, and we're very, very happy to have you here as a fine substitute.

[The editorial referred to follows:]

[Editorial from the Quincy Herald-Whig, Apr. 24, 1981]

PLENTY OF EVIDENCE

Senator Percy this week announced plans to hold a Senate subcommittee hearing in Quincy July 1 to learn what federal regulations are unnecessary and burdensome on businesses. He will not have to go far to find a perfect example of what such regulations can cost, both in time and money.

The same day Percy was announcing his hearing date, a news story from Pittsfield reported what governmental red tape a firm must work its way through before it can construct a plant that will be of great economic benefit to an area. At a meeting this week, Soyland Power Cooperative told Pike County residents it will have to spend $4 million over a three-year period to meet all government regulations and acquire the proper licensing in conjunction with constructing its $500-million, 450-megawatt electoral power plant in Pike County.

To get on with its plans, Soyland must deal with 170 local, state and federal agencies to obtain proper clearance while doing the necessary environmental, archeological, air quality and hundreds of other studies to obtain the proper clearance and licensing for construction to start. And there are no shortcuts. Soyland estimates it will be the fall of 1982 before the necessary paperwork is out of the way and construction can start in 1983. The schedule calls for the plant to be in operation in 1987.

Without question, many of these 170 agencies have legitimate and necessary reasons for the regulations they require. But 170 agencies for one plant!

In his announcement Percy said he hopes to learn which rules "most severely disrupt time, capital, and decision making; which federal agencies impose needless compliance burdens; and which government forms are the most time-consuming or duplicative." He is to report the results to Vice President Bush, chairman of President Reagan's Task Force on Regulatory Relief.

If Soyland chooses, we are certain it can outline for Percy a detailed list to be included in Bush's report. The report and possible resulting changes will be too late to bring relief to Soyland. We hope it will be of benefit to other businesses in the future.

TESTIMONY OF PATRICIA REYNOLDS, ADMINISTRATIVE ASSISTANT, SOYLAND POWER COOPERATIVE; JAMES WEISENBORN, REPRESENTING THE ADAMS COUNTY FARM BUREAU, QUINCY, ILL.; LUCINDA AWERKAMP, ATTORNEY, LAW FIRM OF AWERKAMP AND McCLAIN, QUINCY, ILL.; AND PAUL BROWN, ASSISTANT TO THE PRESIDENT, QUINCY COLLEGE

Ms. REYNOLDS. Well, thank you. I'm appearing on behalf of Richard Ruzich, who is the assistant general manager of Soyland Power Cooperative. He asked that I convey his regrets in not being able to attend the hearing today.

We appreciate the opportunity to express the views of Soyland Power Cooperative, Inc., in Decatur, Ill., the Association of Illinois Electric Cooperatives, and the National Rural Electric Cooperative Association, representing all the cooperatives in the State of Illinois, and the Nation, concerning Federal regulations. We commend this subcommittee and President Reagan's task force on regulatory relief, chaired by Vice President George Bush.

As President Reagan has said, and I quote:

> Government regulations impose an enormous burden on large and small business in America, discourage productivity, and contribute substantially to our current economic woes. It is my intention to curb the size and influence of the Federal establishment.

I will address several areas of direct concern to electric cooperatives. Soyland Power Cooperative, Inc., is in the process of constructing a 450-megawatt coal-fired powerplant in Pike County, Ill. Soyland has signed a $1 billion contract with Peabody Coal Co. to supply Illinois coal for a period of 30 years to our generation and transmission electric cooperatives. The coal mine will deliver approximately 1.2 million tons of Illinois-produced coal per year to generate electricity at the plant. Federal and State laws and regulations have made it difficult to site, let alone construct or operate, such a plant within Illinois. The major obstacles to the siting, construction and operation of the plant has been the Federal Clean Air Act of 1977, as amended, and the Federal Water Pollution Control Act.

In addition, the National Environmental Policy Act, NEPA, as it applied to various aspects of the Federal permitting processes has also posed a major obstacle. While Soyland will comply with the Federal law, it is somewhat discriminatory because, unlike investor-owned public utilities, electric cooperatives cannot obtain financing prior to finalization of the environmental impact statement procedure. The Rural Electrification Administration, an agency within the U.S. Department of Agriculture, which makes the loan guarantee for financing in conjunction with the Federal Financing Bank, an agency within the U.S. Department of Treasury, has determined that the issuance of a generation and transmission electric cooperative loan guarantee constitutes a major Federal action under NEPA and, therefore, must be preceded by a final environmental impact statement. Financing is one of the earliest steps in planning a powerplant, and a final environmental impact statement at this juncture destroys flexibility in all subsequent decisions. The investor-owned public utilities and municipal electric systems are not so affected and avoid the costly delays encountered by a premature environmental impact statement.

In order to bring a reasonable balance to the regulatory process at least two prerequisites appear to be necessary. First, the procedures for promulgating relations by Federal agencies must be revised to allow those being regulated, such as electric cooperatives, to participate in the process in a meaningful way. The notice of, and comment period for, proposed and final regulations should be long enough to give affected groups adequate time to study the regulations, assess their potential impact and submit information and recommendations to the Federal agency.

Furthermore, before regulations become final, the agency involved should be required to explain what consideration was given to the comments of the affected groups in promulgating the final regulations and what consideration was given to the anticipated costs in disruption of existing business practices.

Second, the specific statutes which grant agencies the regulatory power must be revised to include standards and restrictions for governing the regulatory process. It should include a cost-benefit analysis requiring the regulatory agency to demonstrate a reasonable relationship between the cost imposed by the regulations and the benefits derived by such. The regulatory analysis statement should identify the need for the regulations and describe alternative methods for solving the problem, including the absence of the regulation, and should consider the economic, health, safety, and other effects on the economy of such alternative.

Given today's uncertain economic forecasts with high inflation and interest rates, more than ever before, time is money to a major project sponsor. Our experience in working with all regulatory agencies has caused us to identify three areas of specific difficulties which reduce effective and timely decision processes.

The first, a lack of interagency communication and coordination. Coordination between agencies at all levels is often virtually nonexistent. And, unfortunately, this also becomes an internal problem within some of the divisions of larger more complex agencies. The result of this lack of communication is a case of the right hand not knowing what the left is doing syndrome. Interagency scoping meetings and other initiatives are well intended; however, such communication in reality one exists at project initiation and completion. Lack of communication has, in part, probably increased or given rise to the two problems described as I continue.

The second problem is the lack of timely decisionmaking. Agencies both State and Federal are characteristically slow or reluctant to interpret regulations decided on sufficiency and acceptability of information presented in environmental studies associated with permits. For permit applications this problem affects the nature, the direction, schedule, and costs for projects. Implementation of the CEQ scoping process has aided in this early decisionmaking process. This aspect of NEPA environmental impact statement process needs to be encouraged and supported. Agencies are generally cooperative but are less aware or sensitive to applicant's schedules especially before any formal documents are submitted for review.

And the third major problem is the narrowness of mission by individual agencies. Although all agencies are mandated to put forth and promote the policies of NEPA which is a total environmental policy, many agencies tend to view these environmental policies only in light of their own agency orientation or goals. Difficulties arise in situations where two agencies are trying to preserve and/or protect their own resources. They fail to realize that arbitrary total exclusion decisions because of single agency mission means possible sacrifice of another agency's mission. In situation where there is varying quality to a particular resource; that is, wetlands or prime farmlands, in our case, the allowance of use of a lesser quality resource of one agency to maintain a higher quality resource of another agency is often not considered. Goals of the agencies often appear to be in conflict. Attached is a list of Federal, State, regional, and local agencies and organizations that have been contacted to date during the siting and licensing process for Soyland's coal-fired electric generating station, and I believe you'l find approximately 200 agencies and departments have been contacted at this point.

Overregulation is not a parochial problem peculiar to Soyland or the electric cooperatives in Illinois. Attached to this statement is the Statement of the National Rural Cooperative Association in Support of the Regulatory Reform Act of 1981 before the U.S. Senate, Committee on the Judiciary, prepared by Joseph S. Ives, Environmental Council, Energy and Environmental Policy Department, National Rural Electric Cooperative Association, dated May 1, 1981. It demonstrates similar problems encountered with the various Federal laws and regulations by generation and transmission electric cooperatives located throughout the United States.

Finally, in closing, I wish to point out that through resolutions adopted by members, the Association of Illinois Electric Cooperatives and the National Rural Electric Cooperative Association, strongly support and endorse the concept of reform of the regulatory process. The thousands of Federal regulations being promulgated every year and in an ever increasing rate, must be dealt with quickly. These regulations which sometimes exceed congressional intent, have the force of the law and cost not only electric consumers, but consumers in general, billions of dollars annually. The time is long overdue for a comprehensive regulatory accounting which compares the benefits of Federal regulations with their impact on the cost of living, employment, productivity, scientific progress, and capital formation. It is absolutely essential, if we are to help bring one of the major causes of inflation under control of this Nation. Thank you.

Senator PERCY. Thank you very much indeed, Ms. Reynolds. That's a very strong endorsement.

Mr. Weisenborn, I don't think the hearing could be complete without the testimony of a full-time farmer, and now that we have the U.S. Department of Agriculture in the hands of our good friend John Block who gets high marks from farmers for the way he has administered a relatively small list of regulatory programs. I'm pleased your testimony, relating to the problems of Adams County farmers, talks about the problems you have with other Government agencies. Would you please be good enough to give us your testimony?

Mr. **Weisenborn**. Thank you, Senator Percy. I am Jim Weisenborn, a rural Quincy grain farmer and also legislative chairman of Adams County Farm Bureau, volunteer membership organization of 3,700 members. I'd like to thank you at this time for the opportunity to testify.

The environmental impact statements have become burdensome and quite costly and should be balanced by consideration of the economic impact of proposed regulations.

A local case in point deals with the proposed highway bridge over the Illinois River at Valley City, which is a connecting link to the CIA between Springfield and Quincy, and, of course, in this area we are very much concerned that the bridge be built. This project is being held up, with greatly increased costs, because of the impact statement being done on the eagle population there. The eagles are not nesting in this area, merely wintering in this area, and in the process are moving from area to area. They have been seen flying underneath the bridge at Keokuk, Iowa. And in our opinion it doesn't look like it's a big problem for the eagles to get around the bridge on the Illinois River.

We believe in the need for the National Endangered Species Act of 1973 but feel it should be amended.

The increase in coyote population here in Adams County, as well as in the Western States, is a big concern to farmers, and we urge that the coyote not be classified as an endangered species.

Here in Adams County we've had several cases of coyote kills. One farmer in the last 2 years has said he has lost around 600 head of sheep to coyotes and estimates those losses at approximately $32,000.

He also said that when the coyotes killed the sheep, they didn't eat the entire animal but just certain parts of the sheep. Another Farm Bureau member actually saw a calf being killed by a coyote. And there is also a large number of farmers in this area that used to farrow their pigs out in the timber in summer this time of year, but with the increase in the coyotes in the area, it's not feasible anymore because they kill a large number of the little pigs.

We support the production and marketing of pure, wholesome food. Modern agriculture cannot do this without the use of agricultural chemicals and drugs. When the testing of residues began, the equipment then was capable of testing only in parts per thousand. Laws then were enacted to call for zero tolerance in food. Specifically, the Delaney amendment is what I'm referring to. Now, with the testing equipment capable in testing in parts per billion we still have the zero tolerance of residues in foods because of this. We favor a change in the laws to establish safe tolerances of food and additives in food.

For us to comprehend what 1 part per billion is we need to relate to something we can see. An example of 1 part per billion would be one drop of water in 25,000 gallons of water and another example would be 1 teaspoonful of residue mixed in with the materials filling 15 trains of 100 loaded cars each.

This technology, combined with the statutory and regulatory policies that prohibit the use of any chemical additive found under laboratory conditions to induce tumor formation in test animals, may seriously jeopardize use of many important agricultural chemicals.

Pesticides are also an essential tool of agricultural production. We support reasonable regulations of their use. Federal registration at this time is quite costly as well as time consuming. We feel provisions providing for experimental use, emergency exemptions and State registration are particularly important until the Federal registration is completed.

We also oppose expansion of the U.S. Army Corps of Engineers' authority beyond the area of responsibility which it has historically exercised over navigable waters, defined as having natural stream beds capable of handling barge traffic. We are specifically opposed to inclusion of the term wetlands in the definition of navigable waters of the United States. We also oppose giving the EPA final authority in matters of wetland determination. As the law is written wetland determination should rest with the Army Corps of Engineers. I won't go into detail on the Indian Grave statement since looking over Mr. Klingner's statement it's much more specific than what I had in my testimony.

The Lima Lake Drainage District area also in Adams County, which is directly north of Indian Grave, has for the last 2 years received assurances from the Army Corps of Engineers that the corps will study and correct the problem of the Mississippi River channel eroding into their main stem levee. The drainage district reports that nothing has been done about this problem and they are quite concerned that in time of high water the levee will break with a loss of life and property.

We believe that job safety begins and ends with each individual person and that employees also have a responsibility to observe safe working procedures. We feel that OSHA as a regulatory authority has overstepped its boundaries as established by Congress. We do recognize that many safety devices are needed. One of our local farmers in conversation just told me he purchased a new haybaler which meets all the latest safety standards. One of the particular shields on this baler is around the knotter mechanism. This shield causes dirt and chaff to collect around the knotter mechanism causing it to malfunction, and you have to stop three or four times in an afternoon to clean it out. It's in an area where nobody is going to be when the machine is in use because it's in the middle of the baler, and, as far as the farmer is concerned, it's an added cost with no benefit or safety benefit derived for the farmer. This is a case where the people who imposed the regulations might not have been fully aware of the machine's working conditions before they imposed it.

In essence we feel that all regulations must be judged on a cost/risk basis. A very high cost of compliance is counterproductive to the economy if there is only a slight risk involved.

We are all affected by the indirect costs caused by regulations. We must reduce frivolous regulations.

There is a need to coordinate the different regulatory agencies and eliminate those areas which several agencies may have jurisdiction. We would hope this could help reduce the time required to obtain some permits and lower the number of contradictive regulations.

Mr. Chairman, again, we appreciate this opportunity to appear before you. We are concerned that in many cases the regulatory burden and cost is counterproductive to our economy. We recognize in our society, a certain degree of our society, we need regulation, yet we must carefully weigh their costs and their benefits. Thank you.

Senator **Percy**. Thank you very much indeed.

Mrs. Awerkamp, we're very grateful to you as an attorney coming on your own time to be with us, and I believe that you can speak on behalf of a great many western Illinoisans who are having trouble with their social security disability claims. My office has long found that the problems of regulations are not just felt by small businesses and farmers and so forth, but by many, many individuals. The Government redtape affects them just as much as it does a business, and perhaps you could give us a summary of your comments. We're going to run out of time, by the way. We won't have time for questions. So I ask you to hold it to 5 minutes, if you can.

Ms. Awerkamp. Thank you, Senator. As you mentioned, I am an attorney in the private practice of law, and for the last 5 years I have done extensive work in the area of social security disability.

The applicant for social security benefits in this category is a worker, not a freeloader. He or she has developed some disease or suffered some injury which prevents him or her from engaging in any substantial gainful activity on a full-time basis. I emphasize that the regulations require that the disabled applicant for benefits be unable to work at any job—regardless of past work experiences.

When an individual has been unable to work for 6 months, and his or her disabling condition can be expected to last for at least another 6 months, the disabled person may file an application for benefits.

The State Disability Determination Service, and there is one in every State of the Union, makes the determination of medical impairment and vocational ability.

The problems that I see as being overriding in this disability determination process are twofold: The time structure, or lack of it, and the quality of the case development.

Case development starts in the local office, and were you to go into that office to apply for benefits, you would be asked detailed questions about your medical history, your current medical condition, your doctors, your hospitalization history, your work or employment history and the types of skills required in each of the jobs you have held, as well as your formal education and training. Without fail, in every case I have handled in the last 5 years in this area, the initial interview and information gathering process carried on locally is inadequate and usually unnecessarily damaging to the applicant's chances for disability benefits. I'm speaking here of people who are eminently qualified to receive disability benefits. I find that 95 percent of the people I work with have valid disability claims.

This is not the result of poor work by the local office, but rather a reflection of the applicant who is not skilled or trained in providing accurate and pertinent medical information to another layman, even one skilled in seeking this information.

For instance, the hourly rate of pay in 1965 was a factor that most people could not tell you right now. What's interesting, the Social Security Administration has a record of payments that are received by a worker, but this is the sort of factfinding that they want from this very frustrative sick individual.

The initial decision is made by the State disability office, often with poor applicant-supplied application, and often with a lack of solid medical background. Two-thirds of all initial disability applications are denied.

The same agency will make the review. The applicant will have new forms to fill out, of course, and the State agency may or may not contact the same medical personnel contacted on the initial application. They may ask for a physician to examine the individual at the expense of the Social Security Administration.

Again, there is no personal interview or meeting between the applicant and the team consisting of doctors, other medical personnel, and vocational experts in the State agency. We must remember that the file consists of statements made by the claimant; his own medical records, not necessarily prepared information for review on disability; and possibly the narrative report or simply a questionnaire answered by a doctor that has been requested to interview the patient. The questionnaire or report is prepared without any medical history other than what the applicant can tell the doctor and based on one visit. GAO reports between 1976 through 1979 show that in over 50 percent of the case decisions by State agencies, there was not enough evidence in the file to make a decision.

My experience has been that in those clients that I take into the next process, and that's usually the right to become involved with them, is the hearing by the administrative law judge. Of the clients that go before the administrative law judge, 90 percent have reversals of their case and are awarded disability benefits. This isn't because of any special expertise on my part. It's simply experience in knowing what kind of information the judges need in order to make a decision whether it's denial or awarding of benefits. I have two examples. One, I'll go into detail.

Mrs. Jones, of course not her real name, applied for benefits in April 1979, claiming an onset date of disability of December 1978. She was denied. She applied for reconsideration 2 years ago tomorrow.

At this time her records contained a large amount of information concerning an injury in October 1978 which aggravated a spinal condition for a 1978 spinal surgery and medical updates by her treating physicians and surgeons that she was unable to work at that time and for the foreseeable future.

The State agency wasn't satisfied with that medical information and they required her to have two very thorough examinations by a Quincy doctor and by a Springfield doctor. One of the consulting physician's stated, and I quote:

> She would probably be unable to perform any gainful activity. I would suggest that she be referred to an orthopedist or rheumatologist for further evaluation, and perhaps she should also see a neurologist. Further determination of the prognosis and ability to work would need to be delayed pending these evaluations.

The second doctor, a specialist in physical medicine and rehabilitation, found spinal injury, and I quote, "with backache and leg pain, degenerative arthritis of the left shoulder, mild hypertension, chronic bronchitis, reactive depression, chronic, probably due to backache." He also recommended a psychiatric consultation.

The State agency in their infinite wisdom without further medical information denied her reconsideration.

On October 15, this is in 1979, she requested that her matter go before an administrative law judge. Just short of a year after her injury she had that hearing, and as a result of that hearing, the judge determined that, in fact, she had been disabled during that year, that her disabling injury no longer kept her from work. This decision was issued in January of 1980.

She took this matter to the Appeals Council. I filed that appeal in March 1980. In September of 1980 we had no word from them, and I started making waves, and got a phone call from the Appeals Council in Washington saying they had only had the case for about 2 weeks. I can expect that within the next day or two the case would be reviewed, but I shouldn't expect an answer for many weeks because of the stack of work in the typist pool. You can imagine how my client felt about this.

On October 31, more than 9 months after the original judge's decision, the case was sent back to the Appeals Council for further action, including additional vocational development, additional medical development, additional examinations as had been recommended by the two consulting physicians that the Social Security Administration had hired in the first place.

More than 1 year after his original decision we had the second hearing. That was in January of this year, and in the intervening months my client's been hospitalized extensively as she developed a whole host of new problems. Finally in June of this year, the judge decided they had enough information to issue a decision, and so in June he decided that she has been disabled and unable to work from the first date of her application.

She still hasn't got a check. I doubt if she'll ever get a check until the first of September. What she doesn't know is that probably within 2 years they will review her case and we will go back to square 1. She'll be taken off and have to go through the whole proof process again. My recommendation is that State agency be eliminated. I think that the process of creating and developing a full file at the local level, local doctors, people intimately involved with these clients that know what their physical problems are and what their history is have more information than a specialist and then go to the administrative law judge or a counterpart for a face-to-face hearing at an early stage.

And, last, I would request that that determination process be confined to a 6-month period. These people are workers who have homes, they have cars, they have children, they have washing machines that need to be paid for, and they have no funds. This woman has waited 2, almost 3 years without any income. Thank you, Senator.

Senator PERCY. Thank you very much for those valuable suggestions and valuable testimony.

Mr. Brown, finally we come to you, and it's a good thing that we do get into higher education now. We're delighted that your own particular college, Quincy College, has family ties with the subcommittee.

Our staff director, Bill Strauss, tells me that his father, Arthur Strauss, grew up in Quincy and graduated from your college back in 1933. We're pleased to have you testify this morning, and we grant obviously that you, like everyone else, the business of running a college has the same kind of bureaucratic redtape problems with Federal regulations that you felt were serious enough to warrant the time that you're putting in to give this testimony you've prepared. We're pleased to have you, and we'd be delighted to have you proceed.

Mr. **Brown**. Thank you. I'd like to share with you two problem areas that Quincy College faces, but I think they're problems that most private colleges face.

No. 1 is student financial aid regulations. Uncertainty, vacillation and lateness of regulations for Federal student aid programs increases the workload enormously, especially in our financial aid office, computer center, and business office. It also causes increased anxiety for students and their parents.

Most work must be done three or four times, and I've enumerated a number of reasons why. First of all, program funding is not made final until summer, even though financial aid packaging begins in February of each year at Quincy College. We are still waiting for this year's final allocation letter.

Second, national direct student loan regulations were changed in the middle of the 1980–81 award year. Schools did not know how or when to disburse funds. All printed material became obsolete.

Third, for 1980–81, Pell grant payment schedules were changed three times, not becoming final until summer.

Four, Pell grant processing was delayed several months in the spring of 1981, and we are still waiting for payment schedules.

Five, guaranteed student loan regulation changes are still "up in the air" for 1981–82, as are national direct student loan guidelines.

Six, the Middle Income Student Assistance Act, signed in November 1978, increased financial aid to middle-income people. All subsequent legislation has been aimed at cutting back. Colleges have seen aid revenue fluctuate widely, making it difficult for colleges as well as families to plan.

All this confusion costs money and time. Awards must be revised several times and students notified each time. This causes increased personnel, printing, mailing, and telephone expenses, not to mention panic and worry by parents and students.

Many regulations are made retroactive, making it almost impossible to comply.

"Need" formulas are always changing, which is especially detrimental to independent colleges. Because of uncertainty of aid and lateness of awards, many students simply give up and go to low-tuition public schools even though they prefer to attend Quincy College or other independent institutions.

The second problem I'd like to mention deals with the Uniform Guidelines on Employee Selection Procedures of 1978, one of the most difficult areas for Quincy College to comply with Federal regulations. The regulations are highly technical and complex, involving validation of employment actions which have an adverse impact on any of the protected classes under title VII of the Civil Rights Act of 1964.

To make the determination of adverse impact, there is a four-step process which measures the selection rate of any race, sex or ethnic group against the selection rate for the highest group.

Studies must be conducted to determine if adverse impact exists in selection procedures—interviews, tests, review of experience or education, work samples, physical requirements, and evaluation of performance—which are utilized in employment decisions that includes hiring, retention, promotion, transfer, demotion, dismissal, or referral.

The guidelines have been expanded to include all tests, whether written or not. It is extremely difficult to determine adverse impact in some of the areas covered by the regulations.

Validation procedures involve three alternate concepts which are recognized by the American Psychological Association that the Government agencies have incorporated into the guidelines. It is the responsibility of the college to see that a qualified individual performs the appropriate validity study. Our director of equal opportunity does not have those qualifications. She must seek help from the psychology department chairman who has a master's degree and extensive experience in conducting validation research. If he were not on our staff, we would have to hire someone.

The studies to determine if adverse impact exists are very time consuming, especially in view of the number of employees and the many phases of employment decisions which are covered.

In conclusion, because of the problems associated with financial aid regulations and their constant changes, we have two additional clerical persons in the Financial Aid Office that we would not need if regulations were prepared and promulgated on a timely basis.

Furthermore, because of all the equal opportunity and related regulations we must comply with, we have a director of equal opportunity, her secretary and all other related office expenses which would not be needed otherwise.

These funds could be used much more effectively in academic instruction which is our business. Our institution would do just as well, and be just as nondiscriminatory as we are now because we are a Catholic Christian College, dedicated to the ideals of equal opportunity for all. We do what is right because we want to, not because the Government provides us with reams of regulations to follow. Thank you.

Senator PERCY. Thank you, Mr. Brown, very much indeed.

Patricia Reynolds, possibly you could discuss one aspect of your problem because the problems that you've mentioned are of great concern to me. The regulations that prevent Soyland Power Cooperative from supplying the power to western central Illinois also supply a demand for Illinois coal and that ties right in with the developing market that I've tried to help stimulate for Illinois coal.

Just a few weeks ago we held a major coal conference in Carbondale. I worked together with the Governor on this; he came down and appeared at that conference, and we held a hearing down there on how we could develop foreign markets for Illinois coal, and we had the first contract placed right there, a multimillion dollar contract by Spain. This was the first contract that had been placed from a country abroad for Illinois coal, and we are pleased and hope that will stimulate a lot of our countries to follow in their shoes.

Could you possibly estimate the amount of time, manpower, and money that Soyland has spent complying with Federal regulation in your efforts to build the Pike County powerplant. How much do you think this will ultimately cost the consumers of electricity in western Illinois because in the end the consumer ends up paying for all this regulation?

Ms. **Reynolds**. To begin with, I'll address the situation Soyland has had in purchasing the Illinois coal required for production of electricity. We are under contract with Peabody Coal Co. to purchase coal from the Illinois River King Underground Mine which is close to St. Louis. This coal will be mined and transferred by barge up the river to the Pike County site. There are numerous agencies, Federal agencies, that we have to go through to make sure that we are not polluting the air with emissions from the plant or in any other way promoting an environmentally hazardous conditions. Throughout the entire process we have to comply with regulatory standards to get the coal to the Pike County site.

Once it's at the site, we have to comply with emission standards and sludge storage, the coal is used as a fuel source to produce electricity. Soyland started the licensing and siting process, I believe, in 1977 when the idea for the coal-fired electric generating plant was initiated. Since that time we have dealt with, on a constant level, different Federal agencies and Federal controls in the negotiating process in order to obtain the proper licenses.

We had to select a number of sites in the State of Illinois, or had it been viable anywhere throughout the United States. It just so happened we did select one in the State of Illinois. We had to go through a site selection process, and I wish I would have brought our documents, as did the previous gentleman, because we could also stack them all over the table. One of Soyland's major goals was to use the Illinois coal to produce the electricity for Illinois rather than going out to another State, purchasing their coal and bringing it back to use in Illinois. In summary, approximately 200 agencies and departments have been contacted at this point and a great deal of time, manpower, and money have been expended in Soyland's attempt to build the coal-fired powerplant in Pike County.

Senator **Percy**. Thank you very much. Is your name pronounced Weisenborn?

Mr. **Weisenborn**. Weisenborn.

Senator **Percy**. You touched on two regulatory trouble spots in your testimony. First, too infrequently is there prior consultation with the people who are ultimately affected by the rule; and, second, the Government employees responsible for enforcing the rules are sometimes underqualified or unfamiilar with the issue areas they're actually regulating.

Based on your own experience and that of Adams County farmers, how can those two problems be overcome and how can they be addressed by the Vice President's task force?

Mr. **Weisenborn**. Well, the first one, as far as shields on farm machinery, which I'm talking about now, testimony was on a baler. Also shields on combines, for instance, that you have to take loose to grease a bearing behind them. In most of these cases you don't service these machines until they're shut down or shut off anyway, and the cost of the shield is just added expense. I think, and I know the companies have put them on because of compliance from OSHA saying that from someone in there that as long as they see a moving pulley or a moving mechanism, there should be a shield in place.

But in most cases, it's adding the cost to it, and it's not making it any safer for the farmer to run the machine. In most cases, those shields, after the machine is bought, they're there and you have to take a wrench to take a shield off to grease a bearing. The shields are taken off and thrown in the corner of the machine shed and they're gone. I mean the farmers just don't tolerate those types of shields or handicaps. And the same way with that knotter mechanism on the baler. It just is a dust collector, and it has no bearing as far as safety goes for the operator of the machine or the farmer that is using it. It just was a moving part that somebody in OSHA saw come up to the knotter to tie a bale, and they thought, well, we better shield this so nobody gets hurt, but this is a case that I had to point out. I don' know if I answered your question satisfactorily or not.

Senator **Percy**. Thank you, Mr. Weisenborn, very good indeed.

If any of you that have thoughts that you would like to supplement your testimony, we would keep the record open so that you can, and supplement it in any way that you see fit.

Ms. Awerkamp.

Ms. **Awerkamp**. Yes.

Senator **Percy**. I'd like to review with you the three major provisions of the major piece of regulatory reform legislation that we have before us that I'm cosponsoring with Paul Laxalt. With your legal background and the testimony that you've given, I think you can be uniquely qualified to see whether or not these provisions make any sense. The first provision is that the bill would require a cost-benefit analysis of all major rules. A major rule being signed is one that has an impact of $100 million or more. Do you think that a regulatory agency should be required to issue a cost-benefit analysis statement prior to implementing any major rule?

Ms. **Awerkamp**. Generally, especially in business matters, I would support that wholeheartedly. I think in the Social Security Administration, whether we're talking about retirement benefits or disability benefits, we have a unique situation where in a sense that the Administration acts as an advocate to gather information concerning disability, and we're talking about excessive cost for that that I'm not sure are controllable by the Government. For instance, medical testing. Certainly in terms of the administrators, Social Security Administration, I would support that fully.

Senator **Percy**. The second provision of the bill has a judicial review requirement, and that is it makes agency rules much more susceptible to review in court than ever before. Do you think that is a worthy objective in regulatory reform?

Ms. **Awerkamp**. I don't know if that streamlines or causes even more confusion and trouble. And I'm not sure—are you saying that any change or any new regulation must be reviewed?

Senator **Percy**. It's subject to review. The principal point is that knowing that the rule would be subject to court review might cause regulatory agencies to be somewhat more cautious about putting it in and be more conservative you might say in promulgating these regulations.

Ms. **Awerkamp**. I would support that certainly, and I would advocate—I believe it was Mr. Metzger that spoke about recovery of attorney's fees in cases where small businessmen are successful in challenging. I believe it was regulations that affect their business.

I'm not so certain if that wouldn't also be a valuable part of that legislation.

For most people, for instance, in the social security situation they have no funds. Everything that is done is done on a contingent fee basis anyway, and so that when back awards, for instance, come in, they desperately need that money to catch up on their house payments, car payments, and such. I think they bear an unfair burden in challenging what the regulations have done to them.

Senator **Percy**. Thank you. The third provision is simply to try to answer the problem that so many of us in Government see having lived in the private sector before. There is no way to end things in the Government. Programs don't end. They get instituted and they just carry on. And the same thing happens with regulation. The need for a regulation may have long since ceased, but it stays in effect because there is no way to end it. Our bill would call for a comprehensive review of all of the existing regulations over a period of 5 years. We can't do it all at once.

But over 5 years you take a look at all of these regulations: Are they cost effective any longer, are they needed or necessary, or is the marketplace regulated? You don't need to regulate conservation as much today because when you originally started gasoline was selling for 30 cents a gallon. Now it's $1.30 a gallon or more.

Price is a regulator there. People are going to conserve. You don't have to tell the automobile industry to make economy cars any longer. They know it, they've gotten the message loud and clear from the consumer. Why should Government have to regulate that? Is that a good idea, to have a periodic review?

Ms. **Awerkamp**. I think so, and I think the 5 years is a reasonable time. It would be imperative, I think, that that review include—Mayor Nuessen referred to being on the frontline, and he knows how revenue sharing works because he's implemented it. I know how social security disability regulations work because I have to work with them all the time. I think that people that work with those regulations rather than the people that sit and write them should be a major part of that review group.

Senator **Percy**. Finally, Mr. Brown, we're all concerned about the cost of higher education and the growing cost of it. I guess we're all concerned about the higher cost of health care. It's just skyrocketing. With the cutbacks we're facing in Federal student loans and other aid programs, it is vital that you operate efficiently just as it's vital that a hospital operates efficiently. Our job is to see that the Federal Government doesn't help us add to the problem but helps with the problem. If the Federal Government streamlines or eliminates most of the regulations affecting higher education, would this help you absorb some of the budget cuts without big tuition increases? Would it be a significant cost saving for your college? Some educators maintain that the regulatory burdens are as bad as the grant programs. They're just as bad as the grant programs have been good, in a sense.

Mr. **Brown**. I think it depends on the institution. A lot of institutions have many more regulations to deal with than with the particular research I mentioned. Certainly it's going to have a positive effect if regulations are eliminated or reduced. To generalize a little bit more, inflation is really the worst problem that colleges have, private college particularly, because that affects all of our costs. Anything that can be done to bring that in line, in the long run, is going to be most helpful to private schools.

Let me answer your question by giving an example. Our most popular departments at this time are computer science and business administration, and we're going to be adding additional faculty members in each of those areas. If we were able to eliminate all the expenses we must incur because of Federal regulations, we would have more than enough money to fund those two positions.

Senator PERCY. Thank you very, very much indeed. Your statement will be a big help and, I know, of interest to colleges throughout the State. I want to thank the panel very much indeed for your thoughtfulness in being with us this morning.

Mr. BROWN. May I ask you a question?

Senator PERCY. Yes, of course.

Mr. BROWN. Will you be coming back to Quincy in the fall to see a Quincy College soccer game? It's been 2 years since you've been out to see one.

Senator PERCY. I've got to get out there. I'll bring my tennis racket when I come. Thank you. We're going out to see a disaster area where a tornado hit, so I won't be able to stay over this afternoon. Thank you very kindly. I appreciate the warm invitation.

[The prepared statements of Mr. Weisenborn and Ms. Awerkamp, with an attachment, follow:]

PREPARED STATEMENT OF JAMES WEISENBORN

Senator Percy, Members of the Subcommittee, I am Jim Weisenborn, a rural Quincy grain farmer, and I represent the Adams County Farm Bureau, a voluntary membership organization of 3700 members.

I would like to thank you for this opportunity to testify.

We are concerned that the growing number, cost, and power of regulatory agencies is a major threat to the economic well-being and future growth of our country. We are disturbed that regulatory agencies may well be enacting more laws than the Legislative Branch.

We recommend that Congress lay down specific guidelines of our national government and restraints on the agencies that are to administer the laws and are given the power to adopt rules and regulations. Environmental impact statements have become burdensome and costly and should be balanced by consideration of the economic impact of proposed regulations.

A local case in point deals with the proposed highway bridge over the Illinois River at Valley City. This project is being held up with greatly increased costs until an impact statement is done on the eagle population there. The eagles are not nesting in this area—only wintering here—and are seen flying under the bridge at Keokuk, Iowa. We are not only concerned about the increased costs due to the length of time for statements to be completed but also over the fact that the bridge which is needed may never get built because of such statements.

We believe in the need for the National Endangered Species Act of 1973 but feel it should be amended to provide that listing a species as endangered shall be upon that basis alone and not on the basis of "rarity". We feel that the law should not encroach upon economic agricultural or forestry practices.

We believe the proof of a species being endangered should be on the petitioner or the Department of the Interior and not on the general public. The scientific data supporting the inclusion of a species should receive wide dissemination to landowners and private organizations representing the rights of these landowners. Where there is conflict, human need for food and energy should have priority over the protection of endangered species. We urge that the coyote not be classified as an endangered species and that the timber wolf be declassified.

We have had several cases in Adams County of coyote kills. One farmer has lost 600 head of sheep over a two year period to coyotes and estimates those losses at $32,000.

When the coyotes killed the sheep they did not eat the entire carcass but devoured only certain parts. One of our Farm Bureau members reported a calf being killed by coyotes, and many hog farmers can no longer farrow hogs on pasture ground because coyotes will kill most of their baby pigs.

It is because of this that we support livestock producers, sportsmen, and other interested persons in seeking new and more effective means of predator control. We support continuation of all established predator control practices, including traps and chemical toxicants, specifically 1080, under federal or state supervision. We support aerial hunting to help control predator numbers. Large losses of livestock have resulted from federal restrictions on the use of chemicals for animal damage control and the classification of certain predators as endangered species.

No element of society has more compassion for poultry and livestock than the producer. This is best exemplified by the high levels of production and low mortality rates being achieved in modern livestock and poultry operations.

We support the production and marketing of pure, wholesome food. Modern agriculture cannot continue to provide sufficient quantities of high quality food, fiber, and other agricultural products to meet the nation's needs without the judicious use of agricultural chemicals and drugs. We favor careful use of and withdrawal restrictions on feed additives. We feel major penalties for mis-use are preferable to having additives banned completely. We oppose the banning of such additives without adequate proof of danger. We urge thorough investigation of the accuracy of the tests used to determine drug residues in livestock by government agencies. Modern technology now permits detection of chemical residues at levels far below scientific ability to evaluate. When testing equipment could accurately test parts per thousand, regulations were made considering any residues below measurable amounts as being equal to no residue requirements.

For us to comprehend one part per billion we need to relate to something which we can see. An example of one part per billion would be one drop of water in 25,000 gallons or one teaspoonful of residue mixed in with the materials filling 15 trains of 100 loaded box cars each.

This technology, combined with statutory and regulatory policies that prohibit the use of any chemical additive found under laboratory conditions to induce tumor formation in test animals, may seriously jeopardize use of many important agricultural chemicals. In evaluation of chemicals and drugs, the possible detrimental effects must be considered in relation to the benefits derived. We support the establishment of sound research criteria for the range and dosage levels to be tested, the replication needed for valid results, the kind and species of animals to be used in the research and the determination of applicability of the results to humans. A direct correlation between artificial exposure to carcinogens as compared with natural exposure should be proven before an additive is deemed unsafe.

Pesticides are also an essential tool of agricultural production. We support reasonable regulations of their use. Federal registration at this time is quite costly for pesticides and often takes an extremely long time. We feel provisions providing for experimental use, emergency exemptions and state registration are particularly important until federal registration is completed.

Environmental regulations, whether air, water or noise standards, should recognize the essential nature of efficient utilization of organic matter, pesticides and fertilizers as a basic and natural part of agricultural production.

Land ownership is a sacred trust. The primmary responsibility for wise land management rests with those who own or operate the land. Local units of government assisted by state and federal programs should aid in the discharge of the responsibility.

It has been estimated 40 percent of the barge traffic on the Mississippi River consists of grain exports, agricultural chemicals, petroleum and fertilizers. We feel that agriculture is highly effected by federal policies dealing with river management. Federal participation in water development projects should be in cooperation with individual, local, and state interests.

We oppose expansion of U.S. Army Corps of Engineers' authority beyond the area of responsibility which it has historically exercised over navigable waters, defined as having natural stream beds capable of handling barge traffic. We are specifically opposed to inclusion of the term wetlands in the definition of navigable waters of the United States. We oppose giving the EPA final authority in matters of wetland determination. As the law is written wetland determination should rest with the Army Corps of Engineers.

In 1970 The Indian Grave Drainage District here in Adams County applied to the EPA, the Army Corps of Engineers, and other agencies for permits to raise the levees along the river. It took 5 years to receive final permission to start the project. At that time the cost to undertake the project had risen so much that the drainage district could no longer afford the improvements. We feel there is a need to understand these problems by regulatory officials who may not be familiar with budgeting problems associated with these projects.

The Lima Lake Drainage District also in Adams County has for two years received assurances from the Army Corps of Engineers that the corps will study and correct the problem of the Mississippi River channel eroding into the main stem levee. The drainage district reports that nothing has been done about this problem and they are quite concerned that in time of high water the levee will break with a loss of life and property. As mentioned earlier this problem has been pointed out repeatedly to the Colonel in charge at the upper Mississippi flood control association meetings in Keokuk.

Several members of the drainage districts have discussed their concerns about the great 2 master plan for the upper Mississippi. This master plan calls for dredging of the river channel and depositing the dredged material on private farm ground. The drainage districts feel that it would be better to build up the levees than to destroy tillable farm ground.

We feel the pursuit of pollution abatement should be only one of the many factors considered in the development of national water policies. Other factors, including the cost of pollution abatement, the needs of agriculture, the needs for growth, and the presence of naturally occurring pollutants, must also be considered.

We believe that job safety begins and ends with each individual person and that employees also have a responsibility to observe safe working procedures. We feel that OSHA as a regulatory authority has overstepped its boundaries as established by Congress. We recognize that many safety devices are needed. We do become concerned when some of the devices designed to protect may cause the operator to take more risks. One of our local farmers has just purchased a new hay baler which meets the latest safety standards. One of the safety shields is made to protect the knotter mechanisms. This shield causes dirt and chaff to collect around the knotters impeding their operation. The knotter mechanism is not in an area where people would be working but with the chaff build up would require servicing in the middle of the job. This required servicing may in itself create a new safety hazard. This is a case where the people who imposed the regulations might not have been fully aware of the machine's working conditions before imposing their regulations.

As more and more of the farmers products move by truck there is a need to become more efficient with the fuel used by the exempt trucking industry, permitting loads to be hauled both ways would help accomplish this goal. Until now the ICC has regulated freight and allows only a few products which exempt trucking interests may haul.

In essence we feel that all regulations must be judged on a cost/risk basis. A very high cost of compliance is counterproductive to the economy if there is only a slight risk involved.

We are all affected by the indirect costs caused by regulations. We must reduce frivolous regulations.

There is a need to coordinate the different regulatory agencies and to eliminate those areas which several agencies may have jurisdiction. We would hope this could help reduce the time required to obtain some permits and lower the number of contradictive regulations.

We would like to see a more consistent application of regulations where they affect the individuals, so that we might know what to expect.

Mr. Chairman, we appreciate this opportunity to appear before you. We are concerned that in many cases the regulatory burden and cost is counterproductive to our economy. We recognize the need for a certain degree of regulation in our complex society, yet we believe we must carefully weigh their costs and their benefits.

Thank you.

PREPARED STATEMENT OF LUCINDA AWERKAMP

THE SOCIAL SECURITY ADMINISTRATION DISABILITY DETERMINATION PROCESS

I am an attorney in the private practice of law here in Quincy. For the last five years I have practiced extensively in the area of Social Security disability. As time passes, and I have more and more clients seeking representation in this area, I am disturbed by the severe stress that the disabled person faces in qualifying for benefits.

The applicant for Social Security benefits is a WORKER, not a freeloader. He or she has developed some disease or suffered some injury which prevents him or her from engaging in any substantial gainful activity on a full-time basis. I emphasize that the regulations require that the disabled applicant for benefits be unable to work at any job--regardless of past work experiences.

THE APPLICATION PROCESS

When an individual has been unable to work for six months, and his or her disabling condition can be expected to last for at least one year, the disabled person may file an application for Social Security disability benefits. Assuming that the worker has sufficient quarters of coverage to qualify as an insured worker, the other element of proof is proof of the medical condition which is disabling.

When the worker is denied benefits on his initial application, he may file for reconsideration within 60 days of his denial. This claim is again processed by the State Agency, but in another unit than that which made the initial determination of denial. This decision can also be challenged, and the applicant files for a hearing by an administrative law judge. The appeal from his decision is to the Appeals Council, a national unit, and from there to the local federal district court.

THE PROBLEMS

The problems of the Social Security disability determination process are two-fold: the time structure, or lack of it, and the quality of the case development.

Case development starts of course in the local or district Social Security office. Were you to go in to that office to apply for Social Security disability benefits, you would be asked detailed questions about your medical history, your current medical condition, your doctors, your hospitalization history, your work or employment history and the types of skills required in each of the jobs you have held, as well as your formal education and training. Without fail, in every case I have handled in the last five years in this area, the initial interview and information gathering process carried on in the district office is inadequate and usually unnecessarily damaging to the applicant.

This local process is not the result of poor work by employees of the Administration, but rather a reflection of the applicant who is not skilled or trained in providing accurate and pertinent medical information to another layman, even a layman skilled in seeking out the information required in a disability application. I find most applicants are even hard-pressed to detail their work history.

Starting with this base, the local office tries to make contact with the medical professionals involved in the applicant's medical care. Often these contacts prove unsatisfactory, usually because of the medical professional's perception of the questions asked, because of the available case notes, or because of the individual's attitude toward or lack of knowledge about, the disability system. A doctor who refuses to answer a disability questionnaire or who writes in his case notes that he believes the patient is just trying to achieve disability benefits may be just reflecting his own subjective opinions, even though there may be sound objective evidence that the individual applicant does not have the ability to work full time at any occupation.

The initial decision then is made by the State Disability office, often with poor applicant-supplied information, and often with a lack of solid medical background. It is no wonder then that over two thirds of all initial disability applications were denied in 1980.

This same State Agency will make the determination if the applicant appeals the initial decision. The applicant will have a new, extensive set of papers to complete concerning changes in his medical condition since his initial application, and more information concerning his vocational history. The State Agency may or may not contact the same medical personnel contacted on the initial application, and there may be a request for the applicant to be examined by a physician specified by the State Agency, at the expense of the Social Security Administration.

The State Agency review on this reconsideration level will again involve reviews of the case file by medical doctors and vocational experts. This is no personal interview or meeting between the applicant and the team reviewing the applicant's file. Of necessity, the review is only as good as the file itself. We must remember that the file consists of statements made by the claimant; his own medical records, not necessarily prepared for scrutiny as a basis for disability; and possibly the narrative report or simply the answered questionnaire by the doctor the applicant was requested to see--a questionnaire or report prepared without any medical history other than what the applicant can tell the doctor and based on one visit to this recommended doctor. Only about 10% of the cases sent to the State Agencies for reconsideration are reversed, therefore allowing disability payments to begin. Mark S. Coven, writing in the May, 1981 issue of Clearinghouse Review, (copy attached) cites GAO reports between 1976 through 1979 which show that in over 50% of the case decisions by State Agencies, there is not enough evidence in the file to decide the case.

Those applicants who pursue their claim to hearing by an administrative law judge will probably fare no better than they have in the initial application process or on reconsideration. The statistics available in Mr. Coven's article would indicate that only 7.8% of those who appeal to the administrative law judge will be successful in gaining disability benefits. That statistic would include all applicants, both those proceeding on their own and those proceeding with counsel. My own figures as to reversal by the administrative law judge are shocking--fully 90% of the clients I have represented have been found to be disabled. This is not because of any manipulation of procedure or medical evidence, but rather because of the advantage an applicant has when he or she works with someone who knows what information the administrative law judge needs to make a decision.

In every case I have worked on in this field, not one had a complete medical profile of the applicant; not one had a complete appraisal of what specific exertional and non-exertional limitations existed for the applicant; not one had looked to other personal resources, such as a spouse, for information about the limitations or changes in capacity of the applicant. Remember that by the time I take an applicant before the administrative law judge on appeal the applicant has gone through the initial application process and two determinations by the State Agency. The cost to the Social Security Administration must be staggering. Yet for all the cost and all the professional expertise, there is still not an adequate case file at the end of that process.

I have heard administrative law judges, also employees of the Social Security Administration, complain about their growing caseload. It is clear that under the current system of case development and determination, the case load cannot help but grow. Where the early decisions are based on incomplete information, the disabled worker must pursue his claim for disability for the very simple reason that he cannot work. There have never been any "surprise" disability findings in the cases I have worked on--the evidence turned up with an advocate for the applicant makes the decision process an easy one for the administrative law judge.

Interestingly enough, appeal from the administrative law judge to the Appeals Council, or from there to the Federal District Court, is almost totally limited to review of the record below, including the tape recording of the hearing with the administrative law judge. Here again my statistics differ from Mr. Coven's: he cites a 1978 report of the Subcommittee on Social Security of the House Committee on Ways and Means, Disability Adjudication Structure to show that allowances by the Appeals Council or federal courts to be .2%; my records would indicate that where the record is thorough, the reversal rate is 50%.

The other problem I cited earlier is the time structure of this application process. The disabled person cannot apply until six months of disability have passed, and then only if the disability can be expected to last at least twelve months after the onset date. There are no time limits on the decision process--I have had clients wait two years from the day they applied for disability until the day they were notified that their claim had been approved. More time would then elapse before they received any payment from Social Security. Clearly this is not the effective program employees and employers believe they are supporting through their tax contributions.

I have seen disabled heads of household sell everything but their worry while they wait for the disability benefits to come through--remember these are individuals who cannot work and who have no other income. They must live on their savings, if there are any, and the generosity of their families and friends. I can assure you that after a year, the generosity grows pretty thin, and the disabled worker's frustration and despair over financial problems grows overwhelming. Naturally these concerns add to his physical problems, and create a whole new set of emotional and psychological strains within and among the applicant and his family.

CASES IN POINT

Mrs. Jones (not her real name) applied for social security disability benefits April 23, 1979, claiming an onset date of December 23, 1978. Her application was denied for medical reasons on June 7, 1979. On July 2, 1979, two years ago tomorrow, she filed for reconsideration of her claim.

At this time the Social Security records contained a large amount of information concerning an injury in October of 1978 which aggravated Mrs. Jones' spondylolisthesis, her 1978 posterior elementectomy (spinal surgery) and medical updates by her treating physicians and surgeons that she was unable to work at that time and for the foreseeable future.

At the request and expense of the State Disability Determination Agency, Mrs. Jones was required to submit to two very thorough evaluations, one here in Quincy and another in Springfield, Illinois. One of the consulting physician's stated that

"...she would probably be unable to perform any gainful activity...I would suggest that she be referred to an orthopedist or rheumatologist for further evaluation...and perhaps she should also see a neurologist...Further determination of the prognosis and ability to work would need to be delayed pending these evaluations."

The second doctor, a specialist is physical medicine and rehabilitation, found "sponsylolisthesis with backache and leg pain...degenerative arthritis of the left shoulder...mild hypertension...chronic bronchitis...reactive depression, chronic, probably due to backache." He recommended a psychiatric consultation.

Without further medical information, State Agency denied her application on October 2, 1979. I should point out to you that those examination results or recommendations were not made available to Mrs. Jones, so she could not supplement her own medical records by seeking out those specialists herself.

On October 15, 1979, Mrs. Jones requested that her matter be taken up by an administrative law judge . Her hearing was scheduled by the ALJ for December 19, 1979, just short of a year after her disabling injury. As a result of that hearing, the judge determined that Mrs. Jones had been disabled from the date of her injury in late 1978 until the month of her hearing, December, 1979, but that as of that date she was no longer disabled. His decision was issued January 14, 1980.

In March Mrs. Jones appealed to the Appeals Council for review of the ALJ's decision. Months passes with no word from the Appeals Council, and Mrs. Jones continued to be just as disabled as she was in December, 1978. Finally, on September 16, 1980, I wrote to the Social Security Administration and asked for a status report. Five weeks later I received a telephone call from an individual with the Appeals Council. They had not even received the case until September; he promised the case would be reviewed in a day or two. But he cautioned that we still would not get a report of the Council's decision for several weeks due to an overflow of work in the typing pool. Explaining that to a suffering, broke client is a difficult task indeed.

On October 31, 1980, more than nine months after the ALJ's decision, the Appeals Council ordered that the case be remanded to the ALJ for further action, including additional vocational development regarding any transferable skills; additional medical development to delineate the effects of the claimant's orthopedic problems on her residual physical capacities; a neurosurgical (back) examination and physical capacities evaluation and the testimony of a vocational expert.

The ALJ scheduled the hearing on remand for January 27th, 1981, more than a year after his original decision, and now two years after the disabling injury to Mrs. Jones.

On February 6, 1981, after the hearing, the ALJ asked the State Agency to arrange for additional medical information to be provided, after examination of Mrs. Jones, by a board certified specialist who had not previously examined Mrs. Jones.

On February 17, 1981, I sent the ALJ copies of medical records concerning Mrs. Jones from a recent hospital confinement. On February 18, 1981, The State Agency arranged for a consultative examination with a physician in Peoria, Illinois. I called the ALJ and reminded him that we had previously discussed the severe hardship travel presented to Mrs. Jones, requiring ambulance transportation.

Consequently on February 27, 1981, the State Agency set up an appointment with a consultant in Hannibal, Missouri with a psychiatrist for March 20, 1981.

On March 15, 1981, Mrs. Jones was again admitted to the hospital, where she remained until March 25, 1981, of necessity missing the appointment with the psychiatrist. In the next weeks she received numerous phone calls from the State Agency trying to get a committment from Mrs. Jones as to when she could get to the psychiatrist. On April 17, 1981, I finally received copies of the medical information concerning Mrs. Jones' hospitalization from March 15 to March 25, and I relayed it to the ALJ. Two days later I received a phone call from the Judge's office telling me that the records indicating chronic pulmonary disease with respiratory failure, arteriosclerotic heart disease with congestive failure, acute bronchitis and secondary polycythemia were sufficient to obviate the consultative exam that had been previously ordered.

For more than a month after that telephone call, my client continued to receive phone calls from the State Agency trying to schedule the appointment that the ALJ had said was now unnecessary. Meanwhile, the favorable decision regarding Mrs. Jones' disability did not arrive. At a hearing on another case with the same ALJ on June 2, 1981, I mentioned to the ALJ that although we had received word that no further evidence was necessary as of late April, we still had no decision, and my client was under extreme financial and emotional hardship.

Finally, on June 8, 1981, the Judge issued his decision, finding that Mrs. Jones is and has been under a continuing disability since her injury in December, 1978. Of course, to date, Mrs. Jones has not received any check from Social Security. I have advised her that past experience would dictate she will not get a regular monthly check until at least August 1, 1981, and maybe not until September.

What I have not told Mrs. Jones is that she will probably receive Social Security benefits without harassment for about eighteen months. Then she will be notified that her disabilty has ceased and therefore her benefits have also ceased. In fact, she will be told that she has been overpaid, and that she must refund money for the last month or two to the Social Security Administration. And then we will begin the process all over again.

That is what has happened to a man I will call Mr. Smith. By the time I met Mr. Smith, he had already gone through the application and appeal procedure, and he had just received his denial of disability benefits by the Administrative Law Judge on April 11, 1979. I helped him file a new application and start the process over again since his time to appeal the decision had expired. We went through the same reconsideration process as in Mrs. Jones' case, and ended up before the ALJ on October 2, 1980. The ALJ saw fit to rule that the period of disability began on December 10, 1977 and continued to exist. Mr. Smith has suffered and continues to suffer from Bullous disease, chronic bronchitis, severe reactive depression, congenital brain damage and cervical spine arthrosis.

None of those disabling diseases have changed--in fact June 15, 1981, another section of lung was surgically removed. Yet on April 22, 1981, the State Agency started in again, and required Mr. Smith to see another doctor for extensive physical evaluation and testing--even though current tests were available from both his Quincy surgeon who was preparing for the lung surgery and from his St. Louis specialists at Barnes Hospital and Washington University Clinic.

Mr. Smith, whose ability to grasp ideas and integrate them is extremely limited, was very distressed by this turn of events--both because of the fact that he was about to undergo major surgery and really did not need any additional stress, and because he had just gone through all of these tests, including x-rays, and he could not understand why these other medical records were insufficient.

I appreciate Mr. Smith's concern--but I doubt if he would ever understand my double dilemma: your taxes, and my taxes, paid for all of the tests Mr. Smith had to undergo, as he has been disabled long enough to qualify for Medicare benefits; my other concern is the fact that he has a whole team of excellent physicians who intimately understand the physical problems of

Mr. Smith and the State Agency requests a medical evaluation by a local general practitioner with no history of Mr. Smith and no exceptional expertise in the area of lung disease.

THE SOLUTIONS?

Mr. Coven suggests that there are four areas where improvement could be made, including the quality of case development, the accountability of disability examiners, the special considerations to be given psychiatric evaluations and the quality of consultative examinations. In one sense I cannot improve on those suggestions, especially if the disability system is going to continue to exist as it does today.

But I would hope that the system does not continue to exist as it does today--modern technology and education should make the process less time consuming for the individual applicant and less expensive to the taxpayer.

There is no reason why a disabled person should have to rely on legal representation to secure Social Secuirty benefits. The benefits are his or hers as a matter of law if the covered individual is disabled. Why not make the local interviewer an advocate for the applicant, working to completely develop the case file for the applicant, searching out and scheduling examinations in areas that appear weak upon review of the available medical evidence. This is what happens now on the State Agency level, and I have to believe there would be much less expense if it were done initially, before a whole crew of doctors and vocational experts got involved on the State Agency level.

In fact, if that kind of case development were done as a first step, could not one of the review processes be eliminated entirely? Presently, State Agency makes the initial decision and the reconsideration decision, and then the matter moves on to the Administrative Law Judge. I believe the State Agency determination component is the real stumbling block in the process, causing excessive delays and substantial extra expense.

In the examples of disabled persons cited above, State Agency -- its vocational experts and medical personnel -- had callous disregard for the medical opinions which the State Agency itself sought. Had State Agency either acknowledged Mrs. Jones own medical reports, or had followed the advice of the two consultative doctors, the matter would never have gone to the Administrative Law Judge and The Appeals Council. You'll remember that it was The Appeals Council that sent the Case back to get the 3rd consultative exam requested by the other two doctors.

A solid case record, followed by the same hearing process that occurs now with the administrative law judge would greatly speed up the determination process; limiting the Administration to a six month development and hearing process would assure disabled adults that at least within a year after the onset of their disability they would be receiving benefits. To provide them less is a disgrace.

PROBLEMS WITH THE DISABILITY ADJUDICATORY PROCESS

or

Why Should This Process Be Any Different From Any Other Process?

by Mark S. Coven

There can be no doubt that there are dramatic problems in the disability determination process which have the effect of denying necessary benefits to thousands of disabled claimants. But to suggest that this is a new phenomenon consciously designed to restrict eligibility to the Title II or XVI programs is to ignore the historical perspective of the adjudicatory process. As will be seen in the discussion below, the problems inherent in the adjudicatory process may or may not be of conscious design (but, if so, are not of recent vintage); or it may well be that the problems result from a system that is simply structurally incompetent to perform the disability determination function effectively.

The problems in the disability determination process have been noted for over two decades. In 1960 the Harrison Subcommittee first criticized the use of state agencies in making disability determinations; stressing the inconsistency of state agency claims, together with a lack of development of those claims; the substantial error rates; and the misuse of consultative examinations. The agency's failure to develop the information necessary to make a fair determination of disability was reemphasized in the George Washington University Study of 1964. Similarly, in 1969, Saad Naji of the Mershor Center for Public Policy Research studied the state agency process and concluded that the agency's failure to fully develop necessary information affected most severely persons disadvantaged in terms of their IQ or socio-economic status, persons who have a combination of impairments, and persons who have adverse vocational factors but with less severe medical impairments.

In 1971 a special study group within the Social Security Administration found that claimants had substantial difficulty understanding the agency's form letters and brochures and recommended that all initial determinations be redetermined automatically in every case. Again, in 1975, the Boyd Committee within the Social Security Administration upgraded the quality of initial interviews and recommended that claimants should have a face-to-face interview at the state agency either at the initial or the reconsideration level.

These recommendations were supported by four reports from the General Accounting Office from 1976 through 1979. The earliest of these reports indicated that a review of the state decisions by federal examiners found that in 50 percent of the cases, there was not enough evidence in the file to decide the case. The reports consistently emphasized that the state agencies were not following proper procedures for adequate development of medical information on claims.

The series of GAO reports illustrate the historic and continuing problems in the state disability determination service. This historic perspective is particularly important in understanding the reason that of the number of claims allowed, a decreasing number are allowed on initial determination at the state agency level and an increasing number are approved on appeal, particularly at the hearing level. Through 1968, about 90 percent of awards were made at the initial level (over 93 percent in 1961 and 1963). However, beginning with 1969, this percentage has declined gradually to a low of 82 percent in the year ending June 1977.

As was stated in the 1978 Report of the Subcommittee on Social Security of the House Committee on Ways and Means:

> The irony of this is that many cases receive their fullest development at the hearing level, not at entry, and consequently place a burden on a step in the process intended mostly to assess due process. The ALJ's must often develop complex medical and vocation evidence, as well as determine whether statutory and regulatory standards have been properly applied by the State agency adjudicators.

As has been stated in the California State agency study, cited in the subcommittee report, the initial adjudication is not only a "dehumanized paperwork" program from the claimant's standpoint, but also has had "the effect of isolating and alienating the medical community from the disability evaluation process." Physicians in the community have little understanding of the provisions and requirements of the disability insurance claims, applicants are often erroneously stamped with the welfare label, and physician cooperation is frequently difficult to obtain.

This historical perspective is unimportant in and of itself. But it is important in understanding that the problems exist as a structural matter within the disability determination process and not from a recent policy decision to restrict eligibility to disability programs through inadequate adjudications. The real question, however, is where does either of these analyses lead? As a result of the historic failure of the state agency disability determination process, Congress and the Department of Health and Human Services have finally begun to take action. On December 16, 1980, the Social Security

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Allowances

Year	Initial Number	(State) Percent	Reconsideration Number	(State) Percent
1968	317,400	91	23,400	6.6
1977	480,500	82	60,800	10.0
Percent increase 1968-77		51		160.0
	ALJ		Court or remand	
	Number	Percent	Number	Percent
1968	7,900	2.3	313	0.1
1977	43,100	7.8	1,257	0.2
Percent increase 1968-77		446.0		302.0

Report of the Subcommitee on Social Security of the House Committee on Ways and Means, Disability Adjudication Structure (1978).

Administration announced in a letter the establishment of five experimental projects designed to improve the process at the reconsideration and hearing levels. The decision to develop regulations for such projects was announced at 46 Fed. Reg. 2093 (Jan. 8, 1981). Further, on January 16, 1981, the Social Security Administration announced its draft regulations, at 46 Fed. Reg. 4584, which contain both performance standards and processing time standards at the initial and reconsideration stages. These attempts to improve the process, particularly the new regulations, offer advocates a unique opportunity to pressure the Social Security Administration to make the necessary alterations of the system so that claimants can finally receive a fair adjudication of their disability claim.

The regulations as currently drafted offer only the most general notion as to standards within which the state agency must operate. Advocates may well want to propose much more specific guidelines in order to make the agencies more accountable. This type of specificity could be suggested in the following areas:

1. **Quality of Case Development**
   This would include instructions as to the appropriate weight that should be provided to the reports of treating physicians, consideration of subjective factors, the development of unalleged impairments, and the mandate to provide face-to-face interviews either at the initial or reconsideration levels.
2. **Accountability of Disability Examiners**
   The regulations should require written justification for a denial of a disability claim, which should include reasons for discounting alleged impairments, reasons for discounting the opinion of treating physicians, and documentation of the opinions of the examiner in such areas as those jobs that the claimant is capable of performing. Further, denial notices should provide the specific reasons for the finding of the state agency.
3. **Psychiatric Evaluations**
   The regulations could specify directly that the state agencies must consider psychiatric or psychological impairments as disabling, rather than simply considering only floridly psychotic claimants to be disabled. Further, the regulations could require the adjudicator to look at the way psychiatric disabilities interact with physiological disabilities.
4. **Quality of Consultative Exams**
   The regulations should mandate training of consultative physicians and psychologists, and monitoring of the adequacy of reports and the thoroughness of the examinations, and should remedy the problem of consultants who cannot speak the language of the claimant.

The new regulations afford advocates and disability claimants the opportunity to resolve many of the structural deficiencies in the adjudicatory process that have existed for well over 20 years. The specific suggestions made here are intended only as examples of the type of recommendations that advocates may wish to make in order to improve the disability determination process.

Apparently these proposed regulations are in the same suspended status as are all pending regulations which were suspended by the President's order. Advocates should urge that these very important regulations be put out for comment again.

* * *

Senator PERCY. Our final panel is a one-man panel, Mr. Peter Censky, manager of the Small Business Office, Illinois Department of Commerce and Community Affairs. Mr. Censky, I want to thank you very much for appearing this morning. Your director, John Castle, and I have flown around together. I think he's the only pilot in Illinois I've ever flown with on solo flights. I try to stay with two pilots, but in his case we broke the rule and traveled with him in Illinois. I think he's doing an outstanding job, and he will be testifying tomorrow in Peoria. Under his direction the Illinois Department of Commerce and Community Affairs has done some fine work in streamlining regulations at the State level.

You provided a good deal of guidance to Illinois businesses in their struggle to comply with Federal regulations, and we'd be very pleased to have you testify as our final witness today.

TESTIMONY OF PETER CENSKY, MANAGER, OFFICE OF BUSINESS SERVICES, ILLINOIS DEPARTMENT OF COMMERCE

Mr. CENSKY. Thank you, Senator. I manage the Office of Business Services for the Illinois Department of Commerce and that includes three offices that deal primarily with small businesses and their regulatory problems. The first office is the Illinois Small Business Office. We also have in Illinois the Small Business Information Hotline and an Office of Industrial Services. And, again, we exist to provide assistance and information to the small business community.

Of the approximately 236,000 businesses in Illinois, 90 percent of them are small businesses employing fewer than 50 people.

Senator PERCY. How many of them?

Mr. CENSKY. 236,000 businesses in the State, 90 percent of them employ fewer than 50 people and 86 percent of those businesses employ fewer than 20. So by any man's definition, Illinois is a small business State.

Yet, the problems of the small business community in Illinois have only recently been aired. In November of last year we ran a series of six hearings in this State looking into the problems of small business communities. One of these hearings was held right here in Quincy under the sponsorship of the Quincy Chamber of Commerce. During these hearings and later, during a legislative conference on small business, small business people identified the primary problems they are facing in our economy today. The top issue, as I think we've all realized for some time, was the area of regulations and paperwork. That was followed by issues of capital development and retention, unemployment insurance and workers compensation costs in Illinois, taxes and product liability. Since those hearings and that conference, the legislature and the Governor have worked hard in the past few months to address many of these key issues.

In the area of regulations two crucial pieces of legislation were just passed by the legislature last week. The Illinois Flexible Regulation Act and the Equal Access to Justice Act are those two pieces and they are modeled to a degree on Federal legislation. Under the Flexible Regulation Act of Illinois regulatory agencies would be required to reduce the impact of regulations and procedures on small businesses. The Equal Access to Justice Act would allow a small business to recoop his legal and administrative costs in fighting an agency in a court case that he won. I think together these two bills should begin to change the way regulatory agencies in Illinois deal with the business community.

They're going to force the agencies to have to take into account the small business problems. Two weeks ago, on another of these major issues, Governor Thompson called together leaders of business and labor in a summit conference on unemployment compensation. Both labor and management compromised and produced a major piece of legislation for this session. It's the beginning of a sorely needed process of reform of the unemployment compensation system in Illinois.

Governor Thompson's administration and the Department of Commerce and Community Affairs have initiated a number of other programs designed to address several other problem areas in Illinois. I'd like to take a couple of minutes to talk briefly about the key problems of small businesses. I'll refer now to the three offices that work for me.

First, the Small Business Office exists to advise small businesses of the laws and rules and regulations they must comply with and to assist them in obtaining markets, organizing a business, cutting through redtape and obtaining the necessary management skills that they need to operate their business. Individualized assistance can be obtained by calling myself or one of the other two people in that office. We also conduct tax and regulation seminars throughout the year.

The Small Business Hotline is an office that has a 24-hours-a-day, 7-days-a-week toll free phone number available for small business people or perspective small business owners who need assistance in cutting Government redtape. We can intervene with the regulatory agencies on their behalf. We ask just that they don't call us when it's too late. Call us when you're in the midst of the problem, and we can often educate the agency, intervene for the business, and cut through an awful lot of redtape for you.

The final office I'd like to refer to is the office of industrial services. This office provides free on-site safety and health consultation to Illinois employers. This service is available to any employer requesting it. The program is designed to advise employers of safety and health problems in their plant and to assist them in meeting OSHA requirements before OSHA steps in. We all know OSHA is a four-letter word, however, they're just probably not going to go away. With the help of this sort of consultation service we can provide businesses with information as to what it is OSHA would find wrong with your workplace and help you to bring that workplace up to OSHA standards so that if you ever did get a visit you wouldn't end up with a fine or hopefully you would have been able to avert a major problem.

Finally, we have put together a small business task force in Illinois which consists of about a dozen statewide trade associations. That task force is going to meet July 22 in Chicago to develop a regulatory task force to oversee the regulatory flexibility process, the regulatory sunset, process, and finally to draw up, for want of a better term, a hit list of regulations and laws that need to be addressed by future legislative sessions that are particularly onerous for the small business community.

I'm not going to cover many of the other programs in the department, John Castle will tomorrow, and I would just like to note that these are the primary ones for small businesses.

At this time, I would like to stick in a commercial for defense procurement seminars that you, Senator Percy, are going to be cosponsoring with Senator Dixon and Governor Thompson on August 4 and 5. These programs are designed to cut through redtape that small businesses face in obtaining contracts with either the Defense Department or the General Services Administration of the Federal Government. They are "how to" conferences. They're designed to provide one-on-one assistance between the agency procurement officer and the small businessperson. It helps the small businessperson get on a bidders list, obtain contracts, find out whether their service products are being purchased.

I'd like to close by saying that the Illinois story is beginning to be told. The State has a viable business community, a strong base in high technology research, and a growing base of cooperation between State, Federal, and local leaders. To paraphrase an overused Mark Twainism, "Reports of our demise are exaggerated." Thank you, Senator.

Senator PERCY. Thank you very much indeed. I'd like to start with you because we have had some amazing statistics given you by small business and the size of it in Illinois. We are a small business community. We add the farms because every single one of them is a small business. It's a tough business, and it takes a lot of entrepreneurial skill to run a farm these days, and everyone of them in Illinois is a small business. We've had an uncertainty of markets that's caused by Government regulation occasionally.

Past presidents have stopped exports of certain products because they wanted to drive the price down here on domestic markets. Presidents have stopped exports of certain products because they wanted to drive the price down here on domestic markets. President Carter for the first time in 200 years in this country used a farm embargo on products destined to go under contract to the Soviet Union to implement foreign policy. I have now put a bill in, and Senator Dixon has become the principal Democratic cosponsor of that bill to prohibit any President in the future from embargoing selectively an agriculture product. He can go ahead and embargo, but he has to embargo everything across the board if he does. Otherwise, he has to come to Congress and ask to selectively embargo an agricultural product. Do you think eliminating the ability of a President to do this and regulating exports would be a desirable factor to help create the image of the United States as a reliable supplier of agricultural products in the future?

Mr. CENSKY. I think so, Senator. I think, based upon the incident that you're referring to, I think we have become somewhat of an unreliable partner with our European and South American markets especially. Our department is partially funded by our own agriculture fund in Illinois to market those products, and it's not easy to do when you've got an embargo going.

In the area of agriculture I'd like to mention one other thing that the person who was here before talked about—the inability of the regulatory agencies sometimes to deal with technology, and the new technologies, and we have come across this very same incidence of a same business using a mosquito larvacide in northern Illinois in which they were using it in a different way than it has been used. The product has been licensed. It was produced by a major company. The small businessman was going to be required to put together a very expensive research project for a product that had already been licensed, and the problem was simply that the regulators at both the Federal and the State level, in this case, did not have a handle on this new technology. And I think this may well be in the next 10 years, as we go through a tremendous upsurge of high technology adaptions to industry and to agriculture, this may well prove to be an enormous problem for productivity.

Our regulators, our scientists in Government are not keeping up with the technologies that private industry is developing, and, if they cannot speak the same language, if they cannot understand the same problems that private industry is meeting, and if they don't know what the products are, they don't know how to deal with the new technologies. We could very well see regulations that inhibit new technologies as they are just developing, as they are in the bud. So that is one very big problem I see coming up in the near future.

Senator PERCY. Thank you. I wanted to draw on the experience that you and Rick Schoell gained. Rick Schoell, of the Illinois Commission on Intergovernmental Cooperation, organized a series of small business hearings which wound up at a conference in Springfield on small business. Inasmuch as you dealt with regulatory reform, what were the principal areas in regulatory reform that are most distasteful to the people of Illinois, or objected to most by small business?

Mr. CENSKY. In the area of regulations, and I'll leave the report of those hearings with you today, but in the area of regulations one of the biggest problems, I think, has to do, not just with an actual regulation and the number of regulations is the problem, but with the enforcement of that regulation, and also with the administration of the agencies that enforce regulations.

Sometimes it's not just the regulator who doesn't understand or goes too far. It might just be that you have agencies that are, quite frankly, not organized to deal with the problems they are causing. To illustrate what I'm saying, if you get a form, and you're a small business person, and you're required to fill out that form, you're 1 of 80,000 business people in the State who got that form, and it has two or three lines that just are not clearly written, the agency causes the small business person who doesn't understand what he's looking for to put the wrong answer down. You are then causing 80,000 separate aberrations for that agency to have to deal with, and it's the agency's fault.

The agency then goes into the crisis operation. They can't deal with 80,000 erroneously filled out forms. They then request more auditors, they increase their staff to go after the business and say "here you didn't fill out the form properly." The problem could have been solved if they had met with the small business community at the front end and said here's our suggestive form, let us know what your comments are. They would have gotten questions back that led them to realize that one or two of their questions were unclear or one or two of their blocks information was not specifically filled out, fleshed out, so that the small business person knew what they were after. The area of regulatory reform and paperwork is a quagmire to get into.

Senator PERCY. Yes.

Mr. CENSKY. And it has already been referred to. The bureaucrats find ways of getting around it. If you want to reduce a two-page form to one page, there are ways of doing it, and the first that pops into some minds is to reduce the size of the print, cram it all in on one page. It's going to take dogged determination on the part of the small business community to keep their feet to the fire on those kinds of problems.

Senator PERCY. Well, I agree with you. One aspect of the testimony that you gave in which you made reference to an onsite consultation service interests me. You note the relatively low level of participation you had. Here you have a potential to prevent losses by small business, thousands of dollars in workmen's compensation losses, OSHA penalties and so forth. How do you analyze why you have such a low level of participation right now, and do you think that we ought to look at such a program for certain Federal agencies?

Mr. CENSKY. I think first of all the problem with the program is that safety and OSHA have left a bad taste in most people's mouths. The agencies have been essentially a club on businesses. It hadn't induced businesses by coaxing them, by offering them advice for their present businesses, and so when our agency comes along, there is a fear that somehow they're connected, that somehow if our agency goes into your business, somehow if they find a serious problem, OSHA is going to find out about it the next day.

The best way we can get it out I think is through hearings like this and through just getting to the press. Now, the Quincy Herald Whig on June 14 of this year ran a very nice article, I guess that was Sunday, in their Sunday edition, about this office, about the Office of Industrial Services. The problem is that we have to keep parading people and keep hammering away that we're free, that we pay through our taxpayer dollars, and that we do not deal with OSHA enforcement people, and that we're here to provide you with a very real service. So it's an office that is growing in a number of contacts it has made. It takes a lot of pumping the press.

Senator PERCY. Fine. In this final question I'll put to you, you have a fine opportunity to get word to the Vice President and his staff on the importance that you may attach to the task being taken on for the President on regulatory reform. Do you see from your vantage point that this is an important problem impeding the growth of the American business? Considering that so much of that business has to come from small business, do they consider this a burden? And is it an important aspect of the overall economic recovery program announced by the President?

Mr. CENSKY. I think, Senator, that perhaps it's the crucial aspect. I fear though that what might happen is that we'll go through and upturn the regulatory process and cure some of the problems and then it will settle back into accrual system again, and then in 20 years we'll have another massive set of regulations. I would like to see one other aspect of approach, and I don't know how it can be done, but to develop a model of the British system where we instill, in essence, a pride in the bureaucrats to do more for less. And instill that it's part of their job description that they do their job with the existing money they're given and that they essentially set up a means of competing among bureaucrats to turn money back to the general revenues at the end of the year, to not spend that money, to be judged as having been effective if they do their job and do it with less money than they were given at the end of the year.

Essentially, we have to instill a pride in the management and on down through the bureaucracy, that your job is not to come crying to the Congress or to the legislature for more money. Your job is to do your job with the given dollars, and, in fact, you will be rated as having been superior in performance if you do your job and turn back some money, and I don't see that this is being done yet, but I think that's important for instilling in the future a sense of responsibility in this area.

[The prepared statement of Mr. Censky, with attachments, follows:]

TESTIMONY OF PETER J. CENSKY
Manager of Business Services
Illinois Department of Commerce
And Community Affairs

Before

Honorable Charles Percy
Quincy, Illinois
July 1, 1981

My name is Peter Censky and I manage the Office of Business Services for the Illinois Department of Commerce and Community Affairs. This office includes the Illinois Small Business Office, the Illinois Business Information Hotline, and the Office of Industrial Services. Our office exists to provide information and assistance to the Illinois Small Business Community and to intercede on their behalf when possible with regulatory commissions and departments of Illinois State Government.

Of the approximately 236,000 businesses in Illinois small businesses comprise over 90%. I'm defining small businesses as those employing fewer than 50 people. Recent studies show that over 66% of all new jobs created in this State are created by businesses employing 20 people or less. These businesses account for over 86% of all the businesses in Illinois. By any rule, Illinois is a small business state.

Yet, the problems of the small business community in Illinois have only recently been aired. In November of 1980 the Department of Commerce and Community Affairs issued a report on 6 hearings it conducted around the State of Illinois into the problems of small businesses. One of those hearings was held here in Quincy under the sponsorship of the Quincy Chamber of Commerce. During these hearings and later, during a legislative small business conference, small business people identified the primary problems they face in our economy today. The issues most often identified were: regulations and paperwork, capital development and retention, unemployment insurance, workers compensation, taxes and product liability. The legislature and the Governor have worked hard in the past few months to address many of these key issues.

In the area of regulations two crucial pieces of legislation, the Flexible Regulation Act and the Equal Access to Justice Act, are progressing well. Under the Flexible Regulation Act Illinois regulatory agencies would be required to reduce the impact of procedures or regulations upon businesses employing fewer than 50 people, when possible. The Equal Access to Justice Act would allow a small business who had been taken before court by an agency to recover legal costs if the small business were found not guilty of the charge. Together these two issues should begin to change the way regulatory agencies in Illinois deal with the business community.

Two weeks ago Governor Thompson called together major leaders of the business and labor community in a summit on the unemployment compensation system in Illinois. Both labor and management compromised and produced a major piece of legislation for this session. Its the beginning of a sorely needed process of reform of the unemployment compensation system.

The Administration and the Department of Commerce and Community Affairs have initiated a number of programs designed to address several other problem areas. I would like to spend a few minutes now talking about some of the programs Illinois has which are available to the Illinois business community.

Small Business Office - The purpose of the Illinois Small Business Office is to advise small businesses on the laws, rules and regulations they must comply with and to assist them in obtaining markets, organizing a business, cutting through red tape and obtaining the necessary management skills to operate a small business. Individualized assistance can be obtained by calling Carson Gallagher or myself at Area Code 312/793-6885 or by calling toll free 800/252-2923. The office also conducts Tax and Regulation Seminars throughout the year.

Small Business Hotline - The Small Business Hotline (800/252-2923) is a 24 hour a day 7 day a week toll free hotline available for small business people or perspective small business owners who need assistance in cutting government red tape or/and locating advice on financing marketing or organizing their business. The number to call is 800/252-2923.

Industrial Services Office - The Office of Industrial Services provides free on-site safety and health consultation to Illinois employers. This service is available to any employer requesting it. The program is designed to advise employers of safety and health problems in their plant and to assist them in meeting OSHA requirements. The office has no contact with the OSHA enforcement people. I'd like to mention that the Quincy Herald-Whig ran a story on this office last June 14 which covered quite well the resources available to small businesses from this office. The toll free member for this service is 800/972-4140.

On this last subject I would like to spend a few minutes talking about some of the things the administration has done in the area of workers compensation relief for businesses. I think nearly all parties to the workers compensation problem in Illinois agree that some reforms of the program are necessary. The problem is deciding on just which reforms and how deep those reforms are going to go is what is holding up changes to the Illinois Workers Compensation System. The Department of Commerce and Community Affairs is not sitting back and waiting for the legislature to affect changes in order to assist small businesses. To a certain extent workers compensation costs are controllable. The first avenue an employer has to getting a handle on his worker's compensation costs is to prevent accidents. The Office of Industrial Services provides what amounts to a very expensive consultation on safety and health absolutely free to the Illinois business community.

In addition to this service the Department has recently co-sponsored with the Illinois Department of Labor and the Illinois Industrial Commission a series of conferences on Workers Compensation. These conferences were designed to educate small business and labor leaders to the intricacies of the Illinois Workers Compensation System and to help them to reduce the costs of Workers Compensation brought about by unnecessary litigation and confusion over how the system operates. Over 1,000 business and labor leaders participated in this process. We have plans to follow-up on these with further programs in the next few months.

Time does not permit me to cover the numerous other services available to the Illinois Small Business Community. However, I would like to highlight a couple of very important defense procurement seminars which will be held on August 4 in Chicago and August 5 in Springfield. These seminars are sponsored by Senator Percy, Governor Thompson, and Senator Dixon. They will cover both Defense Department Procurement and major Contractor Procurement to the Defense Department. The purpose of the seminars is simply to assist small business people in ascertaining whether their products or services are being purchased by the military and I would like to add at this point most are, and secondly to assist them in filling out the necessary forms and making the necessary contacts to get their bids in.

Let me close by saying that the Illinois story is beginning to be told. This state has a viable business community, a strong base in high technology research, and a growing base of cooperation between state, federal, and local leaders. To paraphrase an overused Mark Twainism, "Reports of our demise are exaggerated."

AUG. 26TH 1818

Illinois
Department of
Commerce and Community Affairs

Small Business Report

November 1980

SMALL BUSINESS REPORT

PREPARED BY: Peter J. Censky, Manager
Small Business Office

Rick Schoell, Commission on Intergovernmental Cooperation

WITH SPECIAL THANKS TO:

The Chicago Association of Commerce & Industry
The Mount Vernon Chamber of Commerce
The Rockford Chamber of Commerce
The Quincy Chamber of Commerce
The Champaign Chamber of Commerce
The Illinois Office of Minority Business Enterprise
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In August and September of 1980 the Illinois Small Business Office of the Department of Commerce and Community Affairs conducted hearings into the problems and concerns of small business owners. Over one hundred and twenty individuals presented more than forty hours of testimony at hearings in Chicago, Rockford, Mount Vernon, East St. Louis, Quincy and Champaign. This report presents the issues raised during those hearings and focuses on those most often mentioned, providing an insight into the nature of these key concerns and some of the recommendations made.

Of the 221,853 registered businesses in Illinois the vast majority are small businesses. Though these numbers have grown recently their large number does not include many thousands of unregistered single person (sole proprietorship) firms. With these unregistered businesses added, some estimates peg the number of businesses in Illinois at about 400,000.

ILLINOIS BUSINESSES BY EMPLOYEE SIZE *

NUMBER OF EMPLOYEES	NUMBER OF BUSINESSES
0- 3	143,415
4- 9	29,034
10-19	20,981
20-49	15,771
50-100	6,472
Over 100	6,160
Total	221,853

65% of Illinois Businesses Employ fewer than 4 employees.

78% employ fewer than 10

87% employ fewer than 20

Source: Illinois Bureau of Employment Security

A recent compilation of major inventions over the past fifty years shows small business to be the source of most innovation in society. From the automatic transmission to xerography and now genetic engineering, small business has been at the forefront of society's advances. According to a study by Dr. David Birch of MIT, businesses employing 20 or fewer people create 66% of all new jobs in our economy.* Clearly, a strong small business economy in the 1980's holds forth the promise of reducing our chronic unemployment problem and rekindling our lagging productivity. The purpose of this report is to help generate an understanding of the nature of the obstacles to realizing this promise.

Small business owners and operators who testified at the hearings identified over forty-five separate subjects of concern. Many of these issues directly affect their ability to manage their businesses, market their products and make a profit. Others affect their ability to raise and retain adequate capital for marketing, operating, acquisition and expansion. We have grouped several of these issues into the broad categories of "Regulation and Paperwork" and "Capital Development and Retention". The problems of women in business and minorities in business are covered in separate sections.

The subjects that drew the most comment were, in order:

Regulations and Paperwork
Capital Development and Retention
Unemployment Compensation
Workers Compensation
Women in Business
Minority Business
Taxes (closely related to Capital Development)

REGULATION AND PAPERWORK

Over 60% of those testifying lashed out at the growing burden of regulations and paperwork. Confusing instructions, poorly designed forms, the high cost of compliance are some of the factors of this complex problem. But the concerns of small business people run deeper. Many spoke of the fear and intimidation they feel when dealing with government. Small businesses must deal with the same regulations as large businesses without internal legal and accounting staffs. Several mentioned that their cost of compliance per unit of sales was much higher than that of larger competitors. Many hit the inflationary effects of over-regulation on business, government and the consumer.

The complexity of forms, the time it takes to retrieve the information required for the forms, places an increasing demand on the small business operator's time; time he has committed to planning, marketing, selling, managing and any number of other essential tasks. Legal staffs, accounting staffs and personnel department are foreign to most small businesses. Therefore, the task of researching and filling out the forms falls to the outside professional - at a high cost.

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*The Job Generation Process, David L. Birch, M. I. T. Program on Neighborhood and Regional Change, Cambridge, Mass. 1979

These costs appear in the prices the consumer pays for a product or service. Regulations add to inflation by increasing costs without a like increase in productivity.

Besides inundating small businesses this growth in the regulatory and paperwork burden strains government budgets and stimulates pressures to increase taxes. Improperly filled out forms (due, in part, to vague instructions or poor form design) cause massive problems in bureaucratic systems designed and staffed to operate at peak efficiency only when all the answers are in the correct boxes. As thousands of small businesses file late or incorrect information, systems are stressed and service deteriorates. Individual clerks and bureaucrats have less time to spend on inquiries and sometimes become rude or abrupt with people. When coupled with an already complex system, such behavior intimidates many small business people.

A refrain heard often during the hearings was the fear many feel when confronted with mail from state regulatory agencies. In this system questions abound and answers are hard to get. People are intimidated by a system which drains their energy, time and money. As one participant stated, "over-regulation taxes the personal satisfaction of accomplishing".

Several recommendations were made:

1. Pass legislation mandating cost vs. benefit studies on all business regulations.

2. Require a statement of economic impact for all regulations affecting business.

3. Freeze all state agency budgets for four years with no adjustments for inflation.

4. Eliminate protective regulations that limit competition within an industry or profession.

5. Develop a flexible regulatory policy that limits the adverse impact of regulations on small businesses.

6. Institute a comprehensive forms management program.
7. Begin a program to simplify the language of government forms.
8. Pass Sunset legislation.
9. Establish Small Business Advisory Committees to all agencies that regulate small business - especially the Department of Revenue and the Bureau of Employment Security. These committees are to assist in reviewing forms, instructions and questionnaires.
10. Establish a Hotline or Clearinghouse of information for small businesses.
11. Coordinate state forms and filing schedules with federal forms and schedules where possible.

CAPITAL DEVELOPMENT AND RETENTION

Over 60% of the people testifying cited severe problems in attracting and retaining adequate capital. Perhaps the most pervasive problem facing small businesses in Illinois is the chronic shortage of sufficient money. The capital demands of state, federal, and local governments as well as larger companies have cut deeply into the available capital market leaving riskier small business financially starved.

Capital development, the ability to generate money internally and externally, is as important as the ability to retain that capital. There are limits to the state's ability to influence factors controlling venture, debt and equity capital and, certainly, federal tax laws determine, to a large part, how much money a company can retain. However, several proposals were made which merit some attention:

1. Establish a state job creation tax credit.
2. Create a four million dollar state guarantee fund to guarantee ½ of the un-guaranteed portion of a SBA backed loan. It was estimated that this could create four thousand jobs.
3. Institute a 1% credit against income taxes for investments in plant and equipment.

4. Institute a state loan program.
5. Institute a state guaranteed loan program.
6. Establish a participating bond pool for small businesses.
7. Encourage large insurance firms domociled in Illinois to invest in an Illinois small business pool - perhaps with some state backing as an incentive.
8. Similarly, develop small business investment pools for retirement funds.
9. Create tax incentives for lending institutions to encourage their investment in small businesses. Such inducements might offset the higher cost of servicing small loans.

UNEMPLOYMENT INSURANCE

The problems of the unemployment compensation system are closely related to those already discussed in the section above. Most small businesses do not understand the intricacies of the tax structure and few have an easy time with the complex forms. Adding to the confusion are the rate gyrations caused by recent legislation.

Without reiterating the regulatory and paperwork problems we will dwell briefly on some of the distinguishing aspects of this issue. Small business people believe in the necessity of a fair and equitable unemployment insurance system. However, many feel that the original purpose of the system has been subverted. The system seems to reward the lazy and stigmatize legitimate claimants.

The complexity of the system, the time it takes to challenge unjustified claims, unreasonable deadlines and hearings that require a day away from the business combine to often intimidate small business owners into giving up. One participant told of never loosing an unemployment insurance challenge when he worked as a personnel officer for a large firm; as a small businessman he has never won one. The perception is that the system is too complex to be fair to the small business person.

Several testified that the UI tax structure provides no incentive to small businesses to maintain employment. The tax rate is based upon the ratio of UI claims to total wages paid - a system that throws most small businesses into the maximum tax bracket with the first claim filed. The large number of small businesses at the maximum rate feel no impediment to future layoffs.

WORKERS COMPENSATION

Several participants voiced support for the recent changes in the Workers Compensation statutes, although the general consensus was that the system is in need of deeper reforms. Among the most often mentioned complaints were:

1. The costs of the system far exceed the claims against individual companies.
2. Without medical standards the employers exposure is too high.
3. Businesses cannot challenge insurance company payouts on claims that business owners feel are unjustified.
4. Small businesses feel their costs of compliance with the system are greater than those experienced by large businesses.
5. Many participants testified that their work force had been classified at too high a risk.

This last point surfaced several times as some participants blamed the state for the classification. An agency called the Illinois Workers Compensation Rating Bureau had visited an estimated 17,000 small businesses in the state last year, reclassifying many upward. The Bureau is an arm of the insurance industry, although its title suggests state affiliation.

MINORITY BUSINESS DEVELOPMENT

Minority business owners who testified spoke of particularly difficult problems in raising and retaining capital. Government programs designed to overcome some of these problems and help minorities establish a foothold in their communities are often ineffectual, sometimes abused. Management skills are particularly crucial in the environment most minority businesses must operate, yet many testified to a cronic lack of training programs.

Federal and state procurement policies were called ineffectual. The Illinois minority set-aside program does not apply to large classes of products and services. Minority subcontractors were particularly bitter. Some charged that non-minority firms were setting up minority front firms to bid on minority set-aside contracts. To fulfill government mandates contractors must sub-contract some portions of their work to minority firms - often the least profitable. Many minority firms are passed over in favor of large firms when contracts are let, even though they can perform to government specifications.

WOMEN IN BUSINESS

A 1972 SBA study cited by one of the participants showed that 4.7% of all businesses are owned by women. The difficulties facing women business owners are rooted in sexual stereotyping and can be traced back to early educational experiences. Government procurement policies and procedures, by their nature, tend to exclude women business owners.

Women tend to concentrate in service and professional businesses, sectors not covered by state procurement policies. For this and other reasons women owned businesses garner only .03% of government revenues targeted for businesses according to the study mentioned above.

Several recommendations were made:

1. Pass ERA.
2. Enforce EEO and credit legislation.
3. Establish management training programs.
4. Establish a Women Business Owners Advisory Task Force to the Governor.
5. Develop educational counseling programs to assist women entrepreneurs.
6. Develop competitive spirit in grade schools through team sports.

We will now cover the remainder of the issues and concerns identified at the hearings. In each case we will state the hearings where the issue was raised. When an issue was mentioned at all the hearings we will simply denote "all".

TAXES - (all)

Tax laws are an important determinant of a company's ability to develop and retain capital. Although recent changes in the Inheritance Tax structure in Illinois drew applause, most felt that more relief was needed. The Illinois Retailers Occupation Tax causes a great deal of confusion for many and hurts sales of some big ticket items and machinery. Finally, the Personal Property Tax replacement was hit for bringing in more that it replaced.

EDUCATION - (Chicago, Rockford, Quincy, East St. Louis)

Our educational system is not delivering the skills necessary to support the continued health of small business. Several testified that today's workforce does not possess many basic skills. There is a pressing need for managerial training as well.

SMALL BUSINESS OMBUDSMAN - (Chicago, Mt. Vernon, Rockford)

This category covers several proposals. Some urged the development of an office of Small Business Advocacy similar to the Federal model. Others urged the development of an office with powers to cut through red tape for small businesses.

PRODUCT LIABILITY - (Chicago, Rockford, Quincy)

Although recent Illinois legislation provided some relief, inconsistentcies between state and federal laws continue to cause serious problems. Adoption of the model product liability act was urged.

ENERGY - (all)

A comprehensive Illinois energy plan was called for. Special attention should be directed to Illinois energy resources. Small oil wildcatters in southern Illinois could locate and produce more Illinois oil given better incentives.

SMALL CLAIMS COURT - (Chicago, Mt. Vernon)

Under present laws small corporations must retain legal counsel before the small claims court. The cost of this often exceeds what the small business could hope to recover.

NEIGHBORHOOD SMALL BUSINESS DEVELOPMENT - (Chicago, East St. Louis)

The development of a system of grants for small business start-ups, facade renovation, and business strip development was urged.

COMPREHENSIVE SMALL BUSINESS ECONOMIC DEVELOPMENT, MANAGEMENT TRAINING, AND FINANCE PROGRAM - (all)

Although this subject was mentioned at all of the hearings, there was, by no means, a consensus of opinion. Several pushed for a large effort to develop state supported management training programs throughout Illinois. More urged the state to stay out of this field, citing adequate continuing education, junior college and university resources. Local Chambers of Commerce also provide many services geared toward the small business community.

TECHNOLOGY - (Chicago, Mt. Vernon)

Illinois possesses a base of high technology and technology support firms. One participant was highly critical of state agencies woefully uneducated to new technologies they are charged with regulating. Such an unprofessional attitude limits new product development and depresses the growth of high technology firms in Illinois.

RIGHT TO WORK - (Chicago, Rockford, Mt. Vernon)

Although few small businesses are unionized, some perceived that the growth of union power was a threat to them. Southern Illinois downtown merchants must pay union scale while competing shopping centers are not unionized. This puts them at a competitive disadvantage.

INTERNATIONAL TRADE - (Chicago, Rockford, Mt. Vernon, East St. Louis, AND CHAMPAIGN)

Hundreds of thousands of jobs in Illinois are directly tied to International trade. Several testified to the need for more funding of the International Trade office in order to provide better support for small firms.

TRANSPORTATION - (Chicago, Mt. Vernon, Rockford, East St. Louis)

Illinois possesses a massive, though aging, transportation system. More money should be pumped into road repairs. One serious problem for many small businesses is the disruption caused by road repairs extending past deadlines. All too often local and state transportation officials appear unconcerned with the plight of these small businesses.

ANNUAL SMALL BUSINESS CONFERENCE - (Chicago, Mt. Vernon, Champaign)

Several members of the Illinois Delegation to the 1980 White House Conference called for an annual small business conference in Illinois to keep the concerns of small business before the legislature.

HOUSING INDUSTRY - (Mt. Vernon, Rockford)

The Housing industry in Illinois is severly depressed. The industry is built upon subcontractors who are experiencing serious difficulties. Lien laws need reform to protect them against unscroupulous general contractors.

MINIMUM WAGE - (Mt. Vernon, Rockford, Quincy)

Several indicated that the minimum wage prices many unskilled and young people out of the Labor market. A youth differential would encourage hiring of the disadvantaged.

APPOINTMENTS TO COMMISSIONS - (Rockford)

Typically, some said, appointments to commission and boards go to representatives of large businesses. The small business viewpoint cannot be heard unless more appointments go to them.

SMALL BUSINESS ADVISORY COUNTIL - (Rockford)

A Small Business Advisory Council composed of individuals from all areas of the state and representing all sectors of small business would provide the Governor with guidance on small business problems.

GOVERNMENT SUBSIDIZED COMPETITION - (Rockford, East St. Louis)

Some government programs tend to subsidize larger businesses in direct competition with small business. Government bonding programs are used by some communities to attract large firms and shopping centers which then compete with existing small firms.

BAD CHECKS - (East St. Louis, Rockford)

A constant problem for many retailers is the increasing use of bad checks by customers. Local State's Attorneys often refuse to prosecute these cases, leaving the merchant without his goods or money.

STATE SLOW PAYMENT OF BILLS - (Rockford, Champaign, East St. Louis)

Many small businesses fail for want of capital. State agencies contribute to this problem by taking an excessive amount of time to pay bills.

DISAFFIRMENT OF CONTRACTS - (Quincy)

Under common law a minor can disaffirm a contract at any time. A retailer ran into considerable trouble with high school students repeatedly returning expensive stereo equipment and disaffirming their contracts after a local high school teacher covered the subject in his class. The students had no sense of responsibility to fulfill the terms of the contract.

BANKRUPTCY SALES - (East St. Louis)

Illinois has a law preventing abuse of bankruptcy sales. In the East St.-Louis area some Missouri firms that specialize in going out of business sales have apparently been conducting some sales in Illinois to the detriment of local businesses.

ZONING - (Mt. Vernon)

Zoning laws in many communities in Illinois fail to accommodate the changing structure of small business.

CHRYSLER LOAN - (East St. Louis, Champaign)

Several felt the loan to Chrysler typified government's attention to large business and neglect of small business.

ILLINOIS MEAT INSPECTION PROGRAM - (Champaign)

Illinois livestock dealers testified that the current meat inspection system should be retained to protect the consumer.

ILLINOIS AGRICULTURAL LAND ASSESSMENT - (Champaign)

The present system taxes some agricultural land too high and will prevent the development of slaughterhouse operations in the future. Our tax rates on buildings have skyrocketed in recent years.

EPA - (Chicago, Rockford, Champaign)

Illinois EPA laws are too strict and their enforcement too strenuous.

CONCLUSION

These are some of the problems facing small business today. If these hearings are held again in a year or two many of these issues would drop off and others appear. The risk in all this is that government will mobilize its resources to blunt problems that can be taken care of without government involvement (some would say "interference"). What, then, should government's role be?

Certainly it should be obvious, given the studies cited in the beginning of this report, that small business is an important resource for Illinois. To confront the problems facing small business we need a well reasoned and comprehensive approach. A poorly thought out approach could cause as many problems as it solves - and threaten this resource further. As this report shows, many of the problems are broad and complex while some are simple; our response should match. We urge caution against stepping in with both feet before the nature of a problem is understood. Our resources are not endless. A poor response now could preclude a better response later.

The following list of proposals was made by Dave Ransburg, President of L. R. Nelson Company in Peoria. We do not endorse them here, but present them as an example of the type of forward thinking that needs to be done to ascertain the underlying problems facing Illinois small businesses.

1) Undertake a comprehensive review by type of industry and quantify the findings (in dollars) where possible to determine which major categories of laws, regulations and taxes put Illinois businesses at a competitive disadvantage with other states or other countries. Note - the reasons given for not doing such a study will be that it will a) be too expensive, b) take too long, or c) that the data is not available. You should reply to such skeptics that business people are forced on a daily basis to make similar marketing decisions with imperfect information because of pressure from competitors who have no better information but are out to take away their businesses. Illinois is in such a situation.

2) Develop a prioritized list of problem areas based upon the the estimated dollar economic disadvantage created for each major industry by each major legislative, regulatory and tax category.

3) Call upon members of the small business community and their employees to conduct their own State Conference to develop specific proposals for guidelines which would make Illinois more attractive than other states for them.

4) From the study and these proposals develop a list of guidelines against which all future legislation, regulation, or taxation affecting the Illinois business climate should be judged.

5) Enact comprehensive legislation which on a time phased basis will eliminate or significantly reduce Illinois' competitive disadvantage and which will be consistent with the guidelines established in Paragraph 4.

Another participant, Marc J. Lane, offered his observations and a proposal which we have reprinted. His proposal calls for a privately funded Illinois Small Business Institute. This body would function as a think tank, undertaking studies on issues affecting small business. Perhaps Mr. Ransburg's proposals for an industry by industry study could be handled by such an institute.

Illinois may be an aging giant of a state but we are by no means condemned to continued decline and stagnation. Our vast and growing small business population provides hope for our state's future.

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September 23, 1980

Mr. Peter J. Censky
Manager, Illinois Small Business Office
Illinois Department of Commerce and Community Affairs
160 North La Salle Street
Chicago, Illinois 60601

Dear Pete:

Thank you for the privilege and honor of inviting me to serve as hearing officer at the August 7 hearing sponsored by the Illinois Small Business Office. I found the experience rewarding and informative, and I thought I would take this opportunity to share a few of my observations with you.

Although those who presented testimony typically confined their remarks to specific grievances that they urged ought to be redressed, all seemed to support the proposition that small business has the proven capacity to succeed where big business cannot. What's more, all appeared concerned that this competitive and creative edge is being blunted by external forces that small business has no means to control.

Even with diverse and disparate complaints about their government, witnesses universally perceived institutional inadequacies and failures which, as I construct them, fall into four principal areas:

1. SENSITIVITY. Admittedly, some dissatisfaction with government can only be righted through legislation or adjudication. Yet, a great deal can be accomplished through attitudinal change. Small business is special, and its unique opportunities and burdens need continuing recognition. Many small entrepreneurs distrust and even fear government because they perceive biases and prejudices in favor of big business and a lack of sympathy and concern for their plight. The results are frustration, noncommunication and an effective reduction in the provision of governmental services to small business. Not only does the business community suffer; so does society at large.

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2. INFORMATION. Small business is troubled by its inability to learn what government requires of it and what government offers to it. While big business has the resources and manpower to ferret out legal requirements and planning opportunities, most small businesses do not. They tend to rely on trade associations, chambers of commerce, their friends and colleagues and professional advisors with whom they occasionally visit - - obviously useful, but surely incomplete sources of information. Government, it appears, has no effective means of coordinating and comprehensively answering the compliance inquiries of small business.

Nor, in fact, does it maintain a reliable fact-finding source, knowledgable in the peculiar problems of small business. Legislation and administrative pronouncements may consequently fail to contemplate small business ramifications. The stream of information which ought to flow from small business to government and back again flows less than freely.

3. CONSISTENCY. Paying and reporting tax obligations and meeting other requirements at all levels of government are an expensive and time-consuming burden for all business people, but a necessary one. However, the process can be simplified and its cost greatly reduced. Whenever State forms and procedures can parallel Federal forms and procedures, for example, compliance efficiency can improve. Yet, no mechanism appears in place to seek intergovernmental consistency as to existing or proposed law.

4. COORDINATION. Even among the branches, departments, agencies and bureaus of State government, small business sometimes finds itself obligated to meet conflicting requirements. It appears that, before government sets forth a mandate, it does not always satisfy itself first that its requirement would not be a duplication of effort, less than cost-effective, or worse, incompatible with a requirement of some other wing of government.

Given these recurring themes, small business is operating in an oppressive environment. With a view toward alleviating that oppression, I propose the development of an Illinois Small Business Institute, a voluntary, private-sector response. The Institute would be funded by individual and institutional contributions and manned by unpaid professionals, business leaders, academicians and others dedicated to the creation of a better environment in Illinois for small business.

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The Illinois Small Business Institute would not itself solve the small business crisis, but it surely could continually define and redefine the problems of small business and present solutions to them.

The Institute would be a resource for small business and government alike, improving their relations and fostering their progress together. With the Institute, government can demonstrate a new sensitivity to small business and, in that regard, can rely on a small business "sounding board" before rendering decisions with an impact on small business. With the Institute, government and small business can develop an information clearing house to expedite and validate small business decision-making; and independent small business impact studies can be undertaken and commissioned to support and improve the quality of legislative and administrative decisions. With the Institute, government and business can create a vehicle to render tax, reporting and other requirements at multiple levels of government and multiple arms of State government more uniform and consistent.

I recommend the early installation of an Illinois Small Business Institute - - a "think tank" born of a public-private partnership to insure the viability of small business in Illinois - - so that those who have something important to say for and about small business can be brought together around these critical issues without delay.

Cordially,

MARC J. LANE

Senator **Percy**. Very good indeed, and I want to thank you very much. We've had some very excellent testimony today about the effects of Federal regulation on the people of Quincy in Adams County. As I said at the outset, this is a microcosm in Illinois, a cross section of concerns. If we held the hearings in cities across the country, I don't think the testimony would have differed a great deal. The nature of the problem is shared by everyone, and the high priority now assigned to this by President Reagan is to be commended. We will keep the record open for 30 days so that we can accommodate any additional statements or material that witnesses would like to prepare and submit to us, or any other interested parties would like to submit.

I certainly always welcome letters of inquiry or comment from my constituents, and now that we've had so many of you that have had a chance to meet Mr. Metzger, I ask you to turn to him as well as my own office for the solution to many of the problems that you face individually. I want to specially thank Mayor Nuessen and his deputy, Lyle Nichols, to thank Bob Couch, Rod Clow and their staff at the Quincy Chamber of Commerce. Especial appreciation to the help of Jeff Mays and his staff, and always to my colleague, Paul Findley, and to Governor Thompson for the fine cooperation they have provided. As I indicated at the outset, we're very grateful also to Rob Portman of my Energy Subcommittee staff and to Bill Strauss, staff director, and to John Caldwell, Hal Smith, and Jeanne Obcamp of my Springfield office who have helped immeasurably to arrange for this meeting.

I see John Caldwell and Hal Smith in the audience now. They were not here when I introduced them before. So why don't you stand. Jeanne Obcamp, would you stand please? We thank you very much indeed.

Tomorrow we'll chair a similar hearing in Peoria. The next week my subcommittee staff will meet with dozens of individuals who have expressed special concerns about Federal regulation. Later this summer I shall submit a report of my findings and recommendations to the Vice President's task force on regulatory relief. I have every reason to believe that these hearings will make a significant contribution to President Reagan's eventual regulatory reform program.

Once again I want to thank everyone who has testified and for those of you who have been thoughtful enough to contribute your time in being with us today. We also want to thank, of course, Chris Benner, intern, who is an intern on our Springfield staff. Chris Benner has been a great help with these hearings as well.

The hearing is adjourned.

[Whereupon the hearing was adjourned to reconvene subject to the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT BY RICHARD R. RUZICH, MANAGER OF
ENERGY SUPPLY, SOYLAND POWER COOPERATIVE, INC.
BEFORE THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON ENERGY,
NUCLEAR PROLIFERATION AND GOVERNMENT PROCESSES
JULY 1, 1981
QUINCY, ILLINOIS

We appreciate the opportunity to express the views of Soyland Power Cooperative, Inc., Decatur, Illinois, the Association of Illinois Electric Cooperatives, and the National Rural Electric Cooperative Association, representing all the cooperatives in the State of Illinois, and the nation, concerning federal regulations. We commend this Subcommittee and President Reagan's Task Force on Regulatory Relief, chaired by Vice President George Bush.

As President Reagan has said, "Government regulations impose an enormous burden on large and small business in America, discourage productivity, and contribute substantially to our current economic woes....It is my intention to curb the size and influence of the federal establishment."

I will address several areas of direct concern to electric cooperatives. Soyland Power Cooperative, Inc. is in the process of constructing a 450 megawatt coal-fired power plant in Pike County Illinois. Soyland has signed a $1 billion contract with Peabody Coal Company to supply Illinois coal for a period of 30 years to the generation and transmission electric cooperative. The coal mine will deliver approximately 1.2 million tons of Illinois-produced coal per year to generate electricity at the plant. Federal and state laws and regulations have made it difficult to site, let alone construct or operate, such a plant within Illinois. The major obstacles to the siting, construction and operation of the plant had been the Federal Clean Air Act of 1977, as amended, and the Federal Water Pollution Control Act.

In addition, the National Environmental Policy Act (NEPA) as it applies to various aspects of the federal permitting processes--clean air, clean water, waste disposal, etc., have also posed a major obstacle. While Soyland will comply with the federal law. it is somewhat discriminatory because, unlike investor-owned public utilities, electric cooperatives cannot obtain financing prior to finalization of the Environmental Impact Statement (EIS) procedure. The Rural Electrification Administration, an agency within the United States Department of Agriculture, which makes the loan guarantee for financing in conjunction with the Federal Financing Bank, an agency within the United States Department of Treasury, has determined that the issuance of a generation and transmission electric cooperative loan guarantee constitutes a major federal action under NEPA and, therefore, must be preceded by a final EIS. Financing is one of the earliest steps in planning a power plant, and a final EIS at this juncture destroys flexibility in all subsequent decisions. The investor-owned public utilities and municipal electric systems are not so affected and avoid the costly delays encountered by a premature EIS.

In order to bring a reasonable balance to the regulatory process at least two prerequisites appear to be necessary. First, the procedures for promulgating relations by federal agencies must be revised to allow those being regulated, such as electric cooperatives, to participate in the process in a meaningful way. The notice of, and comment period for, proposed and final regulations should be long enough to give effective groups adequate time to study the regulations, assess their potential impact and submit information and recommendations to the federal agency.

Furthermore, before regulations become final, the agency involved should be required to explain what consideration was given to the comments of the effected groups in promulgating the final regulations and what consideration was given to the anticipated costs in disruption of existing business practices.

Second, the specific statutes which grant agencies the regulatory power must be revised to include standards and restrictions for governing the regulatory process. It should include a cost-benefit analysis requiring the regulatory agency to demonstrate a reasonable relationship between the cost imposed by the regulations and the benefits derived. The regulatory analysis statement should identify the need for the regulations and describe alternative methods for solving the problem, including the absence of regulations, and should consider the economic, health, safety and other affects on the economy of each alternative.

Given today's uncertain economic forecasts with high inflation and interest rates, more than ever before, time is money to a major project sponsor. Our experience in working with all regulatory agencies has caused us to identify three areas of specific difficulties which reduce effective and timely decision processes:

LACK OF INTERAGENCY COMMUNICATION

Communication between agencies at all levels is often virtually non-existent. And, unfortunately, this also becomes an internal problem within some of the divisions of larger more complex agencies. The result of this lack of communication is a case of "the right hand not knowing what the left is doing" syndrome. Interagency scoping meetings and other initiatives are well intended, however, such communication in reality only exists at project initiation and completion. Lack of communication has, in part, probably increased or given rise to the two problems described below.

LACK OF TIMELY DECISION MAKING

Agencies both state and federal are characteristically slow or reluctant to interpret regulations decided on sufficiency and acceptability of information presented in environmental studies associated with permits or permits themselves. For permit applications this problem affects the nature, direction, schedule and costs for projects. Implementation of the CEQ Scoping process has aided in this early decision making. This aspect of NEPA/EIS process needs to be encouraged and supported. Agencies are generally cooperative but are less aware or sensitive to applicant's schedules especially before any formal documents are submitted for review.

NARROWNESS OF MISSION

Although all agencies are mandated to put forth and promote the policies of NEPA which is a total environmental policy, many agencies tend to view these environmental policies only in light of their own agency orientation or goals. Difficulties arise in situations where two agencies are trying to preserve and/or protect their own resources. They fail to realize that arbitrary total exclusion decisions because of single agency mission means possible sacrifice of another agency's mission. In situations where there are varying quality to a particular resource, i.e. wetlands or prime farmlands, the allowance of use of a lesser quality resource of one agency to maintain a higher quality resource of another agency is often not considered. Goals of agencies often appear to conflict. Attached is a list of federal, state, regional and local agencies and organizations that have been contacted to date during the siting and licensing process for Soyland's coal-fired electric generating station.

The Reagan Administration apparently strongly supports the concepts of regulatory reform and has endorsed a bill sponsored by Senator Laxalt, Republican, Nevada, Chairman of the Judiciary Regulatory Reform Subcommittee. This bill, S. 1080, the Regulatory Reform Act of 1981, 97th Congress, would amend provisions of the Administrative Procedure Act to require: (1) a description in comparison of the benefits and costs of the rule; (2) a description of alternatives to the rule; (3) a review of the major federal rules every 10 years; and (4) judicial review of the support of rulemaking file for the factual basis on which the rule was made

This is not a parochial problem peculiar to Soyland or the electric cooperatives in Illinois. Attached to my statement is the "Statement of the National Rural Cooperative Association in Support of the Regulatory Reform Act of 1981 before the United States Senate, Committee on the Judiciary, prepared by Joseph S. Ives, Environmental Council, Energy and Environmental Policy Department, National Rural Electric Cooperative Association, dated May 1, 1981." It demonstrates similar problems encountered with the various federal laws and regulations by generation and transmission electric cooperatives located throughout the United States.

Finally, in closing, I wish to point out that through resolutions adopted by the members, the Association of Illinois Electric Cooperatives and the National Rural Electric Cooperative Association, strongly support and endorse the concept of reform of the regulatory process. The thousands of federal regulations being promulgated every year and in an ever increasing rate, must be dealt with quickly. These regulations which sometimes exceed Congressional intent, have the force of the law and cost not only electric consumers, but consumers in general, billions of dollars annually. The time is long overdue for a comprehensive regulatory accounting which compares the benefits of federal regulations with their impact on the cost of living, employment, productivity, scientific progress, and capital formation. It is absolutely essential, if we are to help bring one of the major causes of inflation under control of this nation. Thank you.

FEDERAL AGENCIES CONTACTED

Federal Aviation Administration
  Great Lakes Region

Federal Insurance Administration
  Chicago Regional Office

United States Department of Agriculture
  Rural Electrification Administration

United States Department of Energy
  Chicago Operations and Regional Office

Federal Energy Regulatory Commission
  Chicago Regional Office

Department of Interior
  Lake Central Office

United States Department of Interior
  National Park Service

United States Environmental Protection Agency
  Air Pollution Control
  Region IV Office
  Region V Office
    Special Permits Section
  Region VII Office

United States Fish and Wildlife Service
  North Central Region Office
  Rock Island District Office

United States Forest Service
  Milwaukee Regional Office

National Park Service
  Midwest Region Office

Shawnee National Forest

STATE AGENCIES CONTACTED

State of Illinois, Governor's Office

Agriculture Stabilization and Conservation Service
  Kankakee Soil Conservation Service
  Ogle County Soil Conservation Service
  Pike County Soil Conservation Service
  Randolph County Soil Survey Office

Illinois Attorney General's Office

Illinois Bureau of Employment Security

Illinois Commerce Commission

Illinois Department of Agriculture
  Soil and Water Conservation Division

Illinois Department of Commerce and Community Affairs

Illinois Department of Conservation
  Division of Grant Administration
  Division of Historic Sites
  Division of Planning and Design
    Impact Analysis Section
  Fisheries Division
  Natural Areas Section

Illinois Department of Conservation
  Region I Office
  Region II Office
  Region III Office
  Region IV Office
  Region V Office
  Southern Streams Project

Illinois Department of Local and Government Affairs

Illinois Department of Natural Resources
  Division of Geology and Land Survey

Illinois Department of Transportation
  Bureau of Location and Environment
  Bureau of Railways
  Division of Highways
  Division of Water Resources
    Bureau of Resource Management
  State Planning Services

Illinois Department of Transportation
  District II
  District V
  District VI
  District VII
  District VIII

Illinois Environmental Protection Agency
  Division of Air Pollution Control
    Air Quality Planning Branch
  Division of Environmental Programs
  Division of Land/Noise Pollution Control
  Division of Water Pollution Control
    Industrial Permits Services
  Division of Public Water Supply

Illinois Job Service

Illinois Natural History Survey

Illinois Soil Conservation Service

Illinois State Geological Survey
    Oil and Gas Section

Illinois State Water Survey
    Publications Department

State of Indiana

Attorney General's Office

Indiana Department of Health
    Division of Air Pollution Control
    Planning and Review Section
    Air Quality Planning Section

State of Iowa

Attorney General's Office
Iowa Job Service Office

Commonwealth of Kentucky

Attorney General's Office

State of Missouri

Attorney General's Office

Department of Labor
    Research and Analysis Division

Department of Natural Resources
    Division of Air Quality
    Division of Geology and Land Survey

Department of Natural Resources
    Solid Waste Program
    Water Pollution Control Program
    Air Pollution Control Program

Department of Transportation
    Highway Department

State of Wisconsin

Attorney General's Office

REGIONAL AGENCIES CONTACTED

Area II Health Systems Agency

Bi-State Metropolitan Planning Commission

Comprehensive Health Planning, Southern Illinois

Great Lakes Basin Commission

Greater St. Louis Health Systems Agency

Greater Wabash Regional Planning Commission

Kaskaskia Regional Port District

Missouri River Basin Commission

Northeastern Illinois Health Systems Agency

Northwest Illinois Regional Council of Public Officials

Ohio River Basin Commission

Ohio River Valley Sanitation Commission

Peoria Regional Health Systems Agency

Quad City Development Group

Region I Health Systems Agency

Regional Education Council

Rock Valley Metropolitan Council

Southwest Illinois Metropolitan and Regional Planning Commission

Two Rivers Regional Council

Upper Mississippi River Basin Commission

West Central Illinois Valley Regional Planning Council

West Illinois Regional Council

LOCAL AGENCIES AND ORGANIZATIONS CONTACTED

Adams County Tax Division

Adams County Sheriff's Department

Albion Fire Department

Belleville Fire Department

Belleville Department of Sewage Treatment

Belleville School District

Boone County Conservation District

Byron Fire Department

Byron City Hall

Carrollton Water Department

Carrollton Fire District

Carrollton Police Department

Champaign County Forest Preserve District

Chester Fire Department

Chester Police Department

Cook County Forest Preserve District

Cordova Fire Protection District

DuPage County Forest Preserve District

Edwards County Clerk's Office

Edwards County Sheriff's Department

Evansville (Illinois) Mayor's Office

Evansville (Illinois) Fire Department

Fairfield School District

Ford County Zoning Department

Ford County Assessor's Office

Grayville City Hall

Grayville Police Department

Greene County Office of Tax Assessments

Greene County Clerk's Office

Greene County Sheriff's Department

Greene County School System

Greenfield Fire District

Griggsville Fire Department

Grundy County Zoning Office

Hannibal (Missouri) Police Department

Hannibal (Missouri) Fire Department

Hannibal (Missouri) City Administrator's Office

Hull Fire Department

Hull Water and Sewer Department

Kane County Forest Preserve District

Kankakee County Regional Planning Department

Kendall County Forest Preserve District

Lake County Forest Preserve District

Marion County Sheriff's Department

Marion County Tax Collector's Office

Macon County Conservation District

McHenry County Conservation District

Menard County Zoning Office

Monroe and Randolph County School District

Mt. Carmel Police Department

Mt. Carmel Fire Department

New Athens Police Department

New Athens Fire Protection District

Office of Education

Ogle County Zoning Department

Ogle County Sheriff's Department

Ogle County Treasurer's Department

Ogle County School District

Pearl Fire Department

Pearl Village Hall

Piatt County Zoning Department

Pike County Sheriff's Department

Pike County Zoning Office

Pike County Treasurer's Office

Pike County Clerk's Office

Pike County School District

Pittsfield Fire Department

Putnam County Conservation District

Putnam County Zoning Department

Quincy Police Department

Quincy Fire Department

Ralls County, (Missouri)-County Clerk's Office

Ralls County, (Missouri)-Sheriff's Department

Randolph County Clerk's Office

Randolph County Tax Assessment Office

Randolph County Sheriff's Department

Rock Island County Tax Assessment Office

Roodhouse Fire District

Rock Island County Forest Preserve District

Rockford-Winnebago County Planning Commission

Scott County Clerk's Office

Scott County Sheriff's Department

Stephenson County Zoning Department

St. Clair County Sheriff's Department

St. Clair County Tax Division

St. Clair County Land Development Department

Vermilion County Conservation District

Wabash County Clerk's Office

Wabash County Sheriff's Department

White Hall Police Department

White Hall Fire Department

Whiteside County Zoning Office

Winchester Fire Department

Winchester Water and Sewer Department

Will County Forest Preserve District

Winnebago County Forest Preserve District

Winnebago County Clerk's Office

Winnebago County Sheriff's Department

MISCELLANEOUS AGENCIES AND ORGANIZATIONS CONTACTED

Benton and Associates Incorporated

Macon County Farm Bureau

Illinois American Water Company

Illinois Nature Preserves Commission

Indiana Statewide Rural Electric Cooperative, Inc.
Hoosier Energy Commission

Izaak Walton League of America, Inc.

Klingner and Associates

McGraw Wildlife Foundation

Natural Land Institute

Ogle County Farm Bureau

Pike County Farm Bureau

Rock Island County Farm Bureau

St. Clair County Farm Bureau

Tibbets-Abbett-McCarthy-Stratton

Wabash County Farm Bureau

STATEMENT OF
THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

In Support of
The Regulatory Reform Act of 1981
Before the U.S. Senate Committee on the Judiciary

Prepared by Joseph S. Ives, Environmental Counsel
May 1, 1981

The National Rural Electric Cooperative Association (NRECA) is the national organization which represents over 1000 REA financed, nonprofit cooperative electric systems which deliver power to approximately 25 million people in 2600 out of 3100 counties in the United States. These consumer-owned electric systems serve nearly 75 percent of the total area of the U.S. which for the most part is sparsely populated containing only about 10 percent of the total population.

I appreciate the opportunity to express the views of NRECA on the Regulatory Reform Act of 1981, S. 1080.

NRECA strongly supports "The Regulatory Reform Act of 1981" as an important step in relieving the consumer of the inflationary burden loaded on him by the tremendous number of overly restrictive regulations. These regulations have so enraged our membership that they passed 21 resolutions (Enclosure 1) at the 1981 NRECA annual meeting, blaming one kind of regulation or another for the national problems which face our country today and demanding relief from this rising flood of strangling regulations.

We do recognize that a large complex society such as ours requires laws and regulations which govern the behavior of its members. However, members of regulatory agencies are also members of our society and they urgently require guidance in the development of their regulations which will be provided by this bill. This bill, we hope, will become a "Regulatory Bill of Rights" for our members and save them from " ... the thousands of individual and often conflicting actions which in their totality have become counterproductive and burdensome to the American consumer" as stated in one of our enclosed resolutions.

The damage which regulations are inflicting on our industry and the consumers we serve is grossly understated, in our judgment, as we can only evaluate their direct effects on our operations. Indirect effects which we attribute to "inflation" in many cases are the effects of regulations on other industries which serve us--steel and concrete for construction, aluminum and copper in equipment, construction and engineering labor. All of these factors have resulted in substantial power cost increases, but tremendous new cost increases are being forecast as new regulations continue to affect power production costs. NRECA's 25 million consumer/owners are outraged by these high electric power costs, and they are convinced that these costs are largely due to the regulations of Federal, state and local agencies. In one resolution our members state " ... the time is long overdue for a legitimate accounting of the impact of Government overregulation, the large amount of resources devoted to these activities, the adverse effects that overregulation has on the cost of living, employment, productivity, capital formation and scientific progress". This is strong language, but in our view it is justified by the existing condition of our economy today--high interest rates, low productivity, high unemployment, low capital formation, and many near bankrupt industries.

NRECA conducted a study to determine the magnitude and causes of the rapidly escalating electric power costs experienced by our members. Although the cost of delivered power has substantially increased during the past few years, we were astounded by additional increases which are being forecast by our generating cooperatives during the 1980s. Increases of 95 percent to 170 percent are being forecast (Table 1) by six generating cooperatives which have had construction programs that spanned the period of intense regulatory activity which occurred during the late 1960s and 1970s. A summary of these construction programs (Table 2) shows that rises in capital costs of 340 percent to 625 percent are the major cause of these increases. In turn, capital cost increases are largely due to Federal, state and local regulations which mandate the use of a large amount of environmental equipment and require an ever increasing number of permits, licenses and reviews (Enclosure 2) which extended construction lead time by 23 to 71 months. Unfortunately, these costs are floors, not ceilings, as the plants shown in Table II commenced construction prior to promulgation of regulations for prevention of significant deterioration, solid waste disposal, 129 priority pollutants, and new environmental impact statements. Additional engineering and design costs are also incurred as a power plant design can no longer be based on previous engineering experience. Every regulatory standard must be considered, and the governing standards must be properly selected based on plant location and many other parameters. For air quality alone, there are seven regulatory programs, each mandating a different emission standard which could change the power plant design.

The NRECA study drew only general conclusions and did not identify specific costs. However, Colorado-Ute Electric Association, a member cooperative, did a complete and detailed study of their costs for the Colorado Public Utilities Commission (Enclosure 3). The study showed that the cost of compliance with existing Government regulations (Table III) as of June 30, 1978 amounted to 34.64 percent of their power production costs (Table IV). When their new units go into service, the cost of compliance will rise to 44.38 percent of their production costs (Table V). The study did not include the following costs:

1. Regulatory costs hidden in the price of materials used in generating plant construction such as steel and cement.
2. Reclamation and other regulatory costs included in the price of fuel purchased by Colorado-Ute, unless passed on directly to Colorado-Ute.
3. OSHA regulations requiring safety devices, imposing operating limitations and similar items.
4. Public Utilities Commission fees, hearing costs, reporting requirements, and added financing costs.

5. Federal Energy Regulatory Commission reporting requirements.
6. Local building permits and minor zoning restrictions.
7. Cost of continuous analysis of new regulations to determine applicability to Colorado-Ute's business.

Colorado-Ute's transmission construction costs have also increased over 100 percent due to Government regulations (Table VI) and are becoming a substantial part of the cost of delivered power to our consumers. In addition to these high compliance costs, another dangerous effect is the loss in productivity of the power generating stations. In sworn testimony before the Colorado Public Utilities Commission (Table VII), Colorado-Ute pointed out that 54 people must be added to the normal operating complement of 156 people at Hayden Generation Station to maintain and operate the equipment required by regulations. At the new Craig Station, 100 people must be added to the normal complement of 320 people. In both cases, 30 percent more operating personnel are required as a result of Government regulations so that productivity has been drastically reduced.

The compliance costs of Colorado-Ute do not necessarily reflect those of other generating cooperatives, but the average incremental cost increase of 26.47 mills per kwhr from six generating cooperatives in various regions of the country is reasonably close to Colorado-Ute's forecast of 27.35 mills per kwhr. If investor-owned and municipally-owned electric utilities experience similar incremental cost increases, a staggering $20.4 billion per year will be added to the consumers' electric power bills and $34.7 billion to the purchase price of services and goods in the marketplace. We recognize that the extrapolation of our experience to all utilities in arriving at an estimate of compliance cost is open to question. However, we do believe that our compliance cost estimate of $55 billion per year is justified, as all utilities are subject to nearly the same Federal regulations and state and local regulations are averaged over six regions. We believe our estimate is conservative as it does not reflect the cost of overhead and G&A, and the cost of the next body of regulations resulting from the Resource Conservation and Recovery Act of 1976, the Toxic Substances Control Act of 1976, the 1977 amendments to the Clean Air Act and the Clean Water Act and Executive Order granting the Council on Environmental Quality regulatory authority.

An estimated price increase of $55 billion for utilities, goods and services by itself in our view is highly inflationary. If we add the price increases due to the regulation of other industries, our estimate could soar. In any event, the consumers' response to these inflated prices is critical: will he maintain his rate of consumption (standard of living) and reduce personal savings (decreasing capital formation) or will he maintain his savings rate and decrease consumption? As consumers have shown little inclination to decrease their standard of living or quality of life, the response of consumers to these increased costs appears to be a reduction in their savings rate, which has been validated to some extent by the Bureau of Economic Analysis, Department of Commerce. Their data show personal savings have dropped from a high of 5.93 percent of GNP in 1975 to 3.64 percent in 1979. The average value of personal savings as a percent of GNP was about 5.04 percent during the past 10 years.

The yearly increase in capital stock can be evaluated by correcting the sum of personal savings and corporate retained earnings for inventory valuation and capital consumption adjustments. If we assume that financing the Federal budget deficit has top priority in the capital market, then the capital stock increase is about $118 billion for 1979. If consumers choose to maintain their living standards and reduce their savings, the capital stock increase could drop as much as 45 percent. Some citizens may not accept either a decrease in their standard of living or their savings rate and demand cost of living adjustments at the bargaining table. This solution results in additional inflation. The choice between savings and living standards is only available to the affluent. The low income consumers near or below the poverty level have no savings, and the subsistance level of their living standard will be further reduced, probably at the expense of their health and welfare. Except for this low income consumer, no one really knows the choice which the more affluent consumer will make and, until these data are obtained, there will be undertainty in any forecast.

The inflationary effect of regulations on the electric power industry may well be disastrous to low income consumers who will be forced to reduce their marginal standard of living and make choices between nutricious food, satisfactory housing, adequate medical attention and clothing. The Department of Health, Education and Welfare pointed out these potential effects of the "prevention of significant deterioration" (PSD) policy adopted by the Environmental Protection Agency in 1973 (Enclosure 4). HEW stated, "Should nondeterioration regulations increase unemployment and consumer prices, they might impair the ability of low income families to improve their diets, housing and medical care. Physical and mental health problems can be correlated with low income status although the casual links are not well understood". While these comments were a response to PSD policy, they are applicable to any regulation which does not benefit the public health but promotes inflation, depletes our capital stock, and decreases productivity.

The effect of inflationary costs has decreased low income consumers' buying power by $14 billion since 1978, according to the Department of Energy's Fuel Oil Marketing Advisory Committee in Report DOE/RG-0039 of July 1980. The study observed that 40 million people were forced to spend at least 21 percent of their income on home heating, home cooling and utility bills, and warned that " ... the immediate effect of rising energy costs has been a loss of income to purchase the other necessities of life--shelter, food and health care ...", and "In the long run continuing increases in energy prices ... could jeopardize the health and safety of the poor and elderly of our nation".

Dr. James McCarroll, M.D., of the Electric Power Research Institute (EPRI), in discussing the health effects of environmental controls at a recent symposium, observed in his concluding statements, "Also, one thing that is too often neglected in looking at control technology and its value is the fact that we have not considered in the past the health cost associated with the technology to be introduced. If it is going to result in greatly increased energy costs, or in a decreased supply of energy, we can anticipate significant health costs far in excess of those that we could demonstrate to occur with pollution".

In a report from the U.S. Senate's Select Committee on Nutrition and Human Needs, June 1974, undernutrition was estimated to cost the economy up to $50 billion per year. The problem of undernutrition is largely experienced by the 40 million people at the poverty level. While this problem may have been reduced during the last few years, the rampant inflation during the 1979 to 1980 period has caused extreme hardship among the economically disadvantaged. In an advertisement from The Washington Post dated October 21, 1979, the Consumer Congress of Virginia charged that "Skyrocketing VEPCO (Virginia Electric Power Company) rates have forced people on fixed incomes to do without food and medicine".

Before the Subcommittee on Public Health and Environment, House Committee on Interstate and Foreign Commerce, September 12, 1973, Dr. Richard D. Stewart, M.D., M.P.H. Professor and Chairman of the Department of Environmental Medicine, the Medical College of Wisconsin, Allen Bradley Medical Science Laboratory, testified as follows: "Another mistake which has been made in the name of air pollution control is to speak of regulations and controls without considering cost. This is not to say that cost should be a major determinant in the setting of standards, but to promulgate primary and, especially, secondary air quality standards is irrational and irresponsible. Assessment of the economic impact of all actions of the EPA should be mandatory". Dr. Stewart's advice was ignored by the Congress in

1973, but the evidence is accumulating in support of his views. While he was concerned with the EPA, his observation is applicable to any regulatory agency whose regulations cause inflation and adversely affect health.

NRECA supports the "Regulatory Reform Act of 1981" but we respectfully suggest that the bill be expanded to include the following provisions:

1. Provide a Congressional Regulatory Veto. NRECA supports the regulatory veto as many regulations are based on the "intent" of Congress as interpreted by regulatory agencies and the courts. Only Congress can determine Congressional "intent" and should retain this power rather than delegate it to nonelected officials of regulatory agencies.
2. Prohibit Research by Regulatory Agencies. NRECA opposes the conduct of scientific research by regulatory agencies, as research can be selected which validates a regulatory agency's preconceived regulatory position and ignore other research. For example, an investigative report entitled "The Environmental Protection Agency's Research Program with Primary Emphasis on the Community Health and Environmental Surveillance System (CHESS) -- An Investigative Report" prepared for the Committee on Science and Technology, U.S. House of Representatives, 94th Congress, November 1976, illustrates the abuses of a regulatory agency conducting research.

Regulatory reform is an utterly essential ingredient of the solution to the national problems of inflation, capital formation and productivity. Although the Federal deficit and energy prices play major roles, the effect of regulations on the economy has been, in our judgment, grossly understated in most cases. Our estimate of compliance costs would appear to reinforce other estimates such as that by Dr. Murray Weidenbaum, "Challenge", November-December 1979, who estimated compliance costs for all business at $102 billion for 1979. In any event, power industry regulations inflate prices, reduce productivity, retard capital formation, and adversely affect health. These inflationary forces form a positive feedback loop which trigger more inflation and, unless this feedback loop can be broken, inflation may soon become uncontrollable.

NRECA welcomes the opportunity to assist you in solving this critical problem.

Table I
Cost of Delivered Power

Generating Cooperative	1978 (Mills/kWhr)	1985 (Mills/kWhr)	Increase (Mills/kWhr)	Increase (%)
East Kentucky Power Co-op	20.83	56.15	35.32	170
Colorado-Ute Electric Assn., Inc.	19.27	46.62	27.35	140
United Power Association	28.00	58.00	30.00	100
Big Rivers Electric Corporation	16.95	41.20	24.25	140
Basin Electric Power Co-op, Inc.	15.41	39.72(1)	24.31	155
Associated Electric Co-op, Inc.	18.89	36.49	17.60	95

(1) 1983 estimate.

Table II
Summary of Increased Capital Costs, Lead Time and Permitting of Cooperatively Owned Power Plants — 1961-1977

	Capacity (MW)	Capital Cost ($/kW)	Permits	Planning (Dates)	Phase (Months)	Construction (Dates)	Phase (Months)	Total (Months)
I BASIN ELECTRIC, N.D.								
1. Leland Olds #1	216	136	3	5/61-6/63	25	6/63-1/66	32	57
2. Leland Olds #2	440	245	6	11/68-7/71	34	7/71-12/75	53	87
3. Laramie River #1, 2, 3	1650	680 E	43	11/72-7/76	46	7/76-4/80 E	46 E	92 E
4. Antelope Valley #1, 2	880	992 E	63	12/74-6/78	43	6/78-4/82 E	46 E	89 E
II EAST KENTUCKY, KY.								
1. Cooper #1	116	163	2	1/60-1/62	24	1/62-2/65	37	61
2. Cooper #2	220	117	2	1/64-1/66	24	1/66-10/69	46	70
3. Spurlock #1	305	376	6	1/70-11/72	35	11/72-9/77	59	94
4. Spurlock #2	508	778 E	30	12/74-3/77	28	3/77-12/80 E	45	73 E
III UNITED POWER, MINN.								
1. Stanton	187	160	3	10/63-8/65	22	8/64-5/67	33	55
2. Coal Creek #1, 2	1100	700	25	11/72-4/75	30	4/75-10/80	66	96
IV ASSOCIATED ELECTRIC, MO.								
1. Thomas Hill #1	180	159	2	1/63-7/64	19	7/64-12/66	29	48
2. Thomas Hill #2	303	107	2	5/65-4/67	24	4/67-4/69	25	49
3. New Madrid #1	600	234	2	7/68-2/69	8	2/69-10/72	33	41
4. New Madrid #2	600	286	6	6/71-10/73	27	10/73-6/77	44	71
5. Thomas Hill #3	630	730 E	11	7/76-7/78	25	7/78-1/82 E	42 E	67 E
V COLORADO-UTE, CO.								
1. Hayden #1	184	162	1	7/61-4/63	21	4/63-7/65	28	49
2. Hayden #2	262	637	16	1/70-1/72	25	1/72-9/76	57	82
3. Craig #1, 2	800	972	58 (1)	1/70-9/74	52	9/74-5/80	68	120
VI BIG RIVERS, KY.								
1. Robt. Reed #1	80	138	2			1/63-1/66	36	36
2. Green #1, 2	480	795	20 (2)	6/74-11/76	28	11/76-12/80 E	48	76 E
3. Wilson #1	880	1000 E	12	6/77-6/80 E	36 E	6/80-1/86 E	67 E	103 E

E - estimated.
(1) - includes mining permits.
(2) - units constructed separately.

Table III

COLORADO-UTE ELECTRIC ASSOCIATION, INC.
COMPARISON OF COSTS OF COMPLIANCE WITH EXISTING GOVERNMENTAL REGULATIONS TO TOTAL PRODUCTION COSTS FOR ALL STEAM GENERATING STATIONS

Twelve Months Ended June 30, 1978
($1,000)

	Cost of Compliance With Governmental Regulations	Total Production Costs
Operation & Maintenace		
Labor	$ 652.9	$ 2,419.7
Fuel Costs	1,127.1	8,250.7
Materials, Supplies and Other Expenses	481.9	1,922.4
Additional Power	2,125.6	
Subtotal	4,387.5	12,592.8
Fixed Costs		
Depreciation	1,469.9	3,362.8
Taxes	266.9	1,004.2
Interest	1,035.9	3,555.0
Insurance	156.7	606.1
Subtotal	2,929.4	8,528.1
Administrative & General Expense	823.1	2,376.0
Total Production Costs	$8,140.0	$23,496.9

% Cost of Compliance to Production Costs
$8,140.0/$23,496.9 = 34.64%

Table IV

COLORADO-UTE ELECTRIC ASSOCIATION, INC.
COSTS OF COMPLIANCE WITH EXISTING GOVERNMENTAL REGULATIONS FOR STEAM GENERATING STATIONS

Twelve Months Ended June 30, 1978
($1,000)

	Hayden Unit 1	Hayden Unit 2 (CUEA Portion)	Nucla Station	Bullock Station	Total
Operation and Maintenance					
Labor	$ 420.1	$ 117.1	$ 51.6	$ 64.1	$ 652.9
Fuel Costs	777.5	241.1	93.1	15.4	1,127.1
Materials, Supplies and Other Expenses	231.4	90.8	125.0	34.7	481.9
Additional Power and Energy	1,410.4	503.1	155.1	57.0	2,125.6
Subtotal	2,839.4	952.1	424.8	171.2	4,387.5
Fixed Costs					
Depreciation	615.7	419.9	233.8	200.5	1,469.9
Taxes	111.6	66.1	51.3	37.9	266.9
Interest	419.6	288.9	139.5	187.9	1,035.9
Insurance	87.6	26.4	11.8	30.9	156.7
Subtotal	1,234.5	801.3	436.4	457.2	2,929.4
Administrative and General Expense	458.4	197.2	96.7	70.8	823.1
Total	$4,532.3	$1,950.6	$957.9	$699.2	$8,140.0

Table V

COLORADO-UTE ELECTRIC ASSOCIATION, INC.
COSTS OF COMPLIANCE WITH EXISTING GOVERNMENTAL REGULATIONS FOR CRAIG STATION 1 & 2

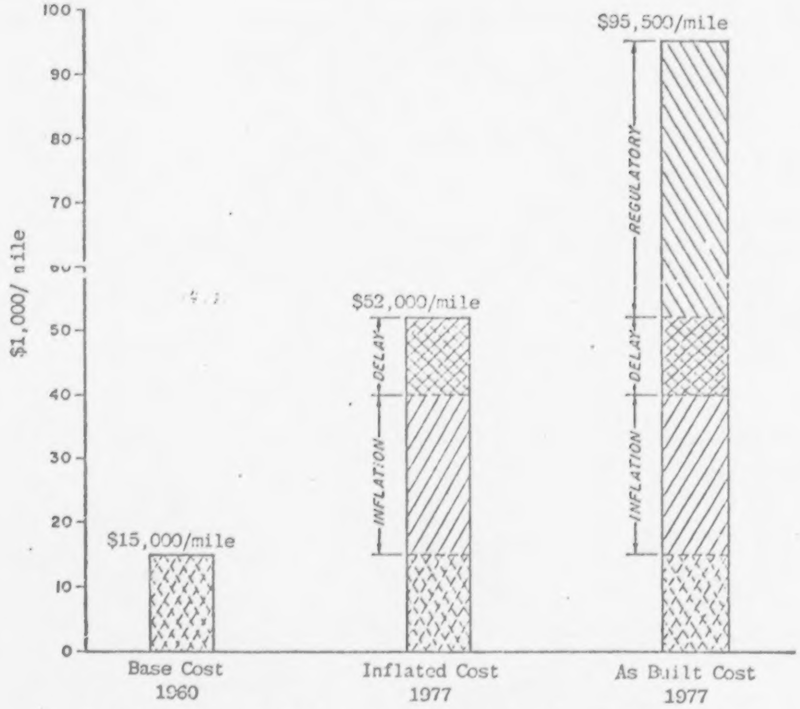
Projected Twelve Months Ended December 31, 1980
($1,000)

	Estimated Cost of Compliance With Governmental Regulations	Estimated Total Production Costs
Operation & Maintenance		
Labor	$ 738.2	$ 1,641.2
Fuel Costs	1,008.0	8,190.0
Materials, Supplies and Other Expenses	1,044.7	1,326.6
Additional Power and Energy Costs	4,482.1	-0-
Subtotal	7,273.0	11,157.8
Fixed Costs		
Depreciation	3,469.2	6,559.2
Taxes	[illegible]02.0	2,764.4
Interest	4,[illegible]96.9	16,100.5
Insurance	[illegible]73.9	659.8
Subtotal	9,442.0	26,083.9
Administrative and General Expense	1,207.0	2,689.6
Total Production Costs	$17,922.0	$39,931.3

% Cost of Compliance to Production Costs
$17,922.0/$39,931.3 = 44.88%

Table VI

TRANSMISSION LINE CONSTRUCTION COST



Cost is for a 115 kV wood pole line built in mountainous terrain. The 1977 as built cost is for the Bayfield-Pagosa 115 kV line completed in 1977.

INFLATION represents the increases in labor and materials from 1960 to 1974.

DELAY represents the increases in labor and materials from 1974 to 1977.

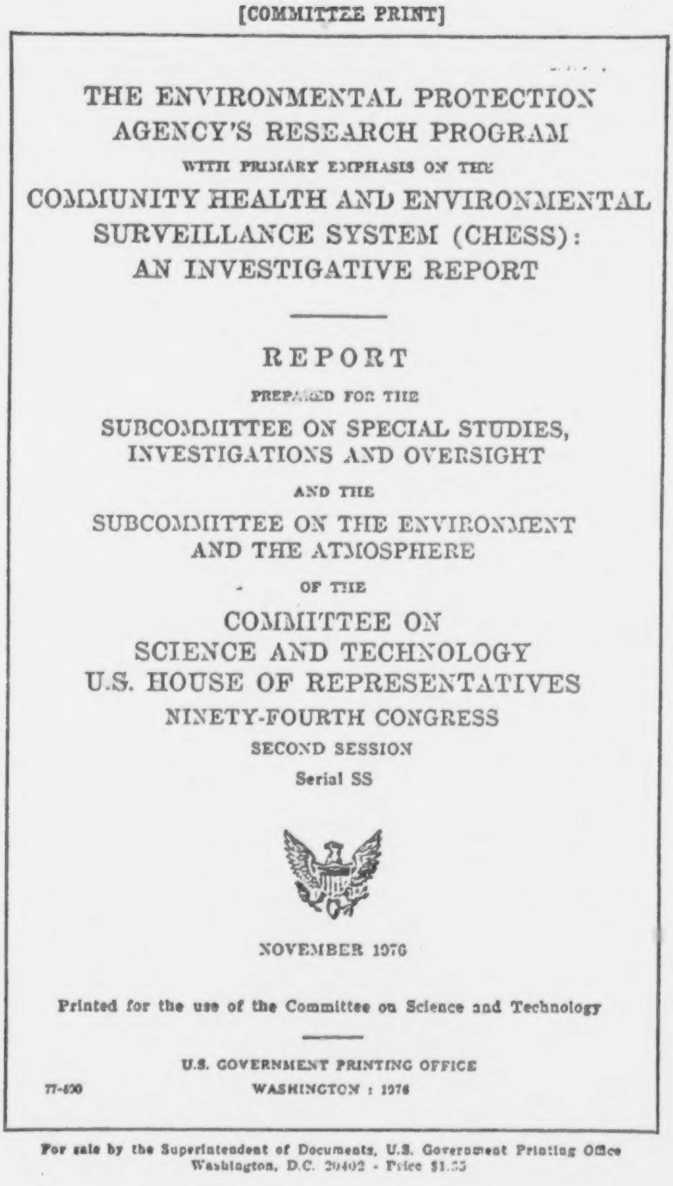
Table VII

12. Q. What has been Colorado-Ute's experience as to the effect of pollution control equipment on manpower requirements at Hayden Station?

A. An additional 54 persons have been required at Hayden Station to operate, maintain and test the pollution control equipment than otherwise would have been required to operate Hayden Station Units 1 and 2 without such pollution control equipment. Our experience with the new pollution control equipment at Hayden indicates that even more personnel will be needed to perform the maintenance required to assure reliable operation of the generating unit. The additional personnel that have been required are as follows:

a.	Maintenance Supervisors	3
b.	Waste Water Supervisor	1
c.	Chemistry Assistants	4
d.	Equipment Operators	15
e.	Welder Mechanics	2
f.	General Mechanics	14
g.	Utilitymen	3
h.	Electrical and Instrument Mechanics	2
i.	Assistant Storekeepers	2
j.	Fuel and Ash Supervisor	1
k.	Heavy Equipment Operators	7
	TOTAL	54

Table VIII



[COMMITTEE PRINT]

THE ENVIRONMENTAL PROTECTION AGENCY'S RESEARCH PROGRAM

WITH PRIMARY EMPHASIS ON THE

COMMUNITY HEALTH AND ENVIRONMENTAL SURVEILLANCE SYSTEM (CHESS): AN INVESTIGATIVE REPORT

REPORT

PREPARED FOR THE

SUBCOMMITTEE ON SPECIAL STUDIES,
INVESTIGATIONS AND OVERSIGHT

AND THE

SUBCOMMITTEE ON THE ENVIRONMENT
AND THE ATMOSPHERE

OF THE

COMMITTEE ON
SCIENCE AND TECHNOLOGY
U.S. HOUSE OF REPRESENTATIVES
NINETY-FOURTH CONGRESS
SECOND SESSION
Serial SS

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Enclosure 1

RESOLUTIONS PERTAINING TO REGULATIONS

ADOPTED AT 39TH ANNUAL MEETING OF THE
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

January 25-29, 1981
San Francisco, California

Over-regulation Strangulation

We recognize the time is long overdue for a legitimate accounting of the impact of government over-regulation, the large amount of resources devoted to these activities, the adverse effects that over-regulation has on the cost of living, employment productivity, capital formation, and scientific progress.

The growth of over-regulation is the summation of thousands of small, sometimes conflicting actions, which in their totality become more and more insidious, pervasive, and expensive to the American consumer.

None of the regulatory agencies were established for the purpose of raising the price of consumer goods, strangling businesses, forcing firms out of business, altering international trade relationships or creating unemployment in whole industries; however, all have occurred as a result of the over-regulation.

We call on the President of the United States and the leadership of Congress to implement immediate action to streamline regulatory procedures and to limit the authority of federal agencies to issue rules and regulations which strangle private initiative to expand and improve our production capabilities—including the consumer-owned rural electric systems of our nation.

Easements on Federal Lands

Rural electric transmission and distribution lines must of necessity in many instances cross federal lands to serve loads which are in the public and nation's interest, but the permitting process established by federal agencies has proven to be burdensome, time consuming, costly and apparently has a low priority within the respective agency. This process has been utilized in a number of instances to delay projects and thus has become unresponsive and counterproductive and as such imposes an unwarranted hindrance upon the very public which the agency is purported to serve.

Immediate review and modification of the permitting procedures is urged so that the process may be expedited and the annual fees related thereto be abolished since said fees are in fact a form of double taxation which is borne by the ultimate consumer.

Council on Environmental Quality Regulations

We remain deeply concerned about the substantial time delays and additional costs which are imposed on rural electric system consumers by the CEQ regulations which became effective on July 30, 1979, and their implementation under the revised REA Bulletin 20-21—which is now in effect. As a result of this concern and, considering the potential impact upon the ultimate consumer by the CEQ regulations, we urge the President to rescind the executive order which granted CEQ authority to promulgate regulations and to abolish those regulations established thereunder.

Over Regulation

The growth of government regulation in recent years has strangled and forced firms out of business, raised levels of unemployment, deteriorated international trade relationships, limited scientific progress and increased the cost of living for all Americans.

Regulation today is the summation of thousands of individual and often conflicting actions which in their totality have become counterproductive and burdensome to the American consumer.

The time is overdue for an extensive accounting of the impact of government regulation and for an intensive effort to reduce regulation.

President Reagan has pledged his administration to reduce the involvement of government in American business and to reduce regulation. We support the administration in this effort and urge NRECA to seek every avenue of relief in achieving this end.

Building Energy Performance Standards

Rural electric cooperatives support the need for stringent standards for energy efficient buildings as mandated by Congress in the Energy Conservation Standards for New Buildings Act of 1976 (Title III, PL94-385).

We feel, however, that the intent of the legislation would be severely distorted by incorporating in the proposed Building Energy Performance Standards such concepts as "weighting factors" and "life cycle costing" and considerations other than efficiencies in new buildings. Such concepts that have been proposed would permit building designers to design a *less* efficient building if the fuel to be used is natural gas or oil, and we feel that this is contrary to national energy policy and dilutes efforts to promote energy conservation.

A better approach would be for standards to be directed *only* at the building envelope (without concern for energy source or appliance efficiencies) to assure that it is designed to attain maximum practicable efficiency throughout its useful life. Such an approach would also permit use of passive solar techniques, something which was not specifically recognized through the BEPS as originally proposed.

We urge that the new standards be at least as stringent as those developed, and in use, by the Farmers Home Administration of the U.S. Department of Agriculture. We suggest that it would be a simple matter to determine the thermal performance of residential buildings constructed according to these standards, and we strongly recommend that the new BEPS simply require this thermal performance as a minimum in residences and mobile homes. This approach would provide performance standards so necessary for early implementation and success in achieving energy efficient buildings.

Interconnection of Small Power Producers and Cogenerators

Rural electric systems recognize the importance of, and support the optimum development of renewable, alternative, and supplementary energy resources. As evidence of this, they are actively conducting research on various approaches to such development and also on the technological issues involved in implementing section 210 of the Public Utility Regulatory Policy Act (regulations requiring interconnection between utilities and small power producers and cogenerators, and requiring cost based rates the utilities should pay for the energy these facilities produce).

Rural electric systems are also conducting studies prior to establishing guidelines for interconnection which will be designed to protect both the small power producer/cogenerator and the utility and its membership.

There is considerable misrepresentation or implication by sellers of equipment as to what small wind and other small power generating systems will produce (what their payback period will be and how much energy they will produce). In addition, improper equipment and installation practices can result in subutility grade power, actual damage to utility equipment, interference with local telephone, TV, and radio reception, and danger to linemen and the public.

We urge the Federal Energy Regulatory Commission (FERC), NARUC and State Public Service Commissions to review regulations that apply to potential power producers and require small power producers and cogenerators to consult with the utility on plans to purchase and install power generation equipment before purchase commitments and/or installations are made.

FCC Application Requirements

The Federal Communications Commission, in a public notice dated December 11, 1980, has proposed to replace the existing radio license application Form 400 and 405A, with Forms 574, 574A and 574B, for the purpose of obtaining additional technical information.

Providing such information would place additional burdens on licensees, particularly those seeking renewal of licenses of existing systems, due to the nature of the required information, particularly the entry labeled "Effective Radiated Power."

Provision of the data required by all licensees in the land mobile services would permit the creation of an unneeded national data base that may be utilized by this federal agency, for the purpose of frequency coordination and which may subsequently lead to the elimination of block frequency assignments in the various land mobile services, elimination of the independent frequency coordination within each service, and the implementation of expanded inter-service sharing of the radio spectrum.

We oppose the implementation of this proposal and request that a copy of this resolution be forwarded to the Federal Communications Commission through appropriate channels.

LEVERAGED LEASE FINANCING—The rising costs of financing electric power plants make it mandatory that all financing methods be used which will minimize the cost of electric service in rural America. Leveraged lease financing, when used with Rural Electrification Administration (REA) guaranteed loans, could save an estimated 2% in the overall interest rate on the plant investment and permit the available REA guaranteed program to be utilized by additional projects. Such financing is not prohibited by statute but is prohibited by policy established by the administration's Office of Management and Budget.

We request that the NRECA staff and members continue their efforts to change the administration's policy so that leveraged lease financing with REA guaranteed loans is available to the rural electric cooperative systems.

CONTROL OF WATERS OF THE UNITED STATES—On March 27, 1975, the District Court of Washington, D.C., as a result of a suit filed by the National Resources Defense Council and the National Wildlife Federation, directed the United States Army Corps of Engineers to expand their authority and jurisdiction over the disposal of dredge and fill material in the "waters of the United States." Such authority is contained in Section 404, P.L. 92-500 (Federal Water Pollution Control Act Amendments of 1972). At issue is the Corps of Engineers establishing new regulations which have the potential of applying "navigation" laws and regulations, specified in the Rivers and Harbors Act of 1899 (33 USC 403), to all waters of the United States.

The result of such action will impose increased federal regulation that weakens state authority and threatens to undermine state legislation and administrative programs. These regulations may require many electric utilities to procure additional federal approval for construction of many transmission facilities as well as possibly requiring federal permits to perform standard agricultural practices by individual farmers.

We are unalterably opposed to federal administrative procedures that could require such unrealistic requirements. We urge that Congress work for legislative definition of "navigable waters" that will limit the navigability of any water body to its present actual value for transporting commerce.

JOINT USE OF FEDERAL LANDS—There presently exist in the United States large amounts of federally owned land which is held for the use and benefit of the general public. Some agencies of the federal government have taken the position that these lands cannot be used for any purpose other than recreation and wildlife habitat. We feel that these lands should be used for multiple purposes such as electric lines, gas and oil lines and other uses which bring substantial benefits to large segments of the general public.

The NRECA staff is directed to work with the Executive Branch and the Congress to eliminate existing bureaucratic delay and fragmented interpretation of the law by the respective agencies which cause delay in construction and additional costs being incurred by the consumer and to allow for the expeditious and coordinated development of these lands for the multiple purposes for which they are intended.

SEPARATION OF EPA REGULATORY AND RESEARCH FUNCTIONS—The primary mission of the Environmental Protection Agency (EPA) is to protect and enhance the environment through exercising the regulatory function of setting standards, promulgating regulations and establishing enforcement procedures. As a secondary mission, the EPA must exercise a research function in order that environmental standards are based on adequate scientific information. A conflict can develop between the regulatory function, which must make day-to-day decisions and the secondary research function, which requires long-term support. The regulatory agency might be responsive to outside pressures or to the preconceived notions of ambitious regulatory staff which may require premature support by the research staff. To prevent these potential abuses in the case of the Atomic Energy Commission, the Congress wisely separated the regulatory and research functions of the AEC by creating the Nuclear Regulatory Commission and the Energy Research and Development Administration.

We urge the administration and the Congress to develop legislation which will separate the regulatory function of the EPA from its research function and distribute the EPA research activities to existing independent agencies such as the Institute of Environmental Health Sciences, DOE, and the Bureau of Economic Analysis.

FEDERAL REGULATION OF POLE LINE ATTACHMENTS—Regardless of any legislation which may be passed vesting regulations of pole line attachments with the Federal Communications Commission, it is our position that such legislation, whether it includes rural electric co-ops or not, is bad legislation, and pole line attachment matters should be a matter of contractual arrangements between interested parties; and if any government regulation is deemed necessary, it should be at the state level only. We urge the NRECA staff to take such measures as may be necessary to support this position.

AGRICULTURAL CHEMICALS—Modern agriculture cannot continue to provide sufficient quantities of high quality food and fiber to meet the nation's needs without the use of agricultural chemicals. Likewise, electric cooperatives cannot economically or effectively maintain their rights-of-way without the use of these substances. Any undue curtailment in the use of these products will result in lower quality and/or quantities of food and fiber, and in more expensive and less reliable electric power for consumers.

In any evaluation of chemicals, the possible detrimental effects must be considered in relation to the benefits derived.

We favor the careful and knowledgeable use of agricultural chemicals unless scientific evidence shows conclusively that the benefits associated with use are exceeded by the risk to man or the environment.

INFLATION—The primary economic problem confronting the nation is the excessive and increasing rate of inflation. It reduces the standard of living of all persons and particularly those who rely on a relatively fixed income. It is especially onerous to farmers and other small businessmen caught in a damaging cost-price squeeze.

The proliferation of nonessential governmental functions and regulations has necessitated a substantial increase in taxes, expenditures, and deficits which cause even more inflation. In addition, a multitude of unnecessary, unworkable, and sometimes absurd environmental control regulations are contributing to the inflationary spiral.

We support substantial reductions in nonessential federal expenditures and the elimination of the federal deficit which would effectively and immediately reduce inflation. We further support the elimination of all unnecessary and unworkable environmental regulations which drastically increase prices of energy and other essential commodities without producing any benefit of equivalent economic value.

We further support measures designed to improve productivity which would be effective in reducing inflation.

ENLISTING CONSUMER SUPPORT AGAINST OVER-REGULATION—A grave threat to the continued growth of America has emerged in the form of outrageous administrative and judicial interpretations of regulatory laws intended to protect the health, pocketbooks, and natural environment of its citizens, but which in practice have led to costly, interminable delays, permit and impact statement duplications, and even total shutdowns of construction required to meet consumers' demands for power. Granted a charter to provide their members with low-cost, high quality electric service, the nation's electric cooperatives have a parallel obligation to inform them of the forces and events that stand in the way of achievement of their aspirations.

We, therefore, believe it imperative that the rural electric movement, both through a coordination of existing resources, and an increased financial commitment where necessary, immediately embark upon a unified communications campaign to inform our employees, members, office holders, and the general public of the burdensome costs of wasteful over-regulation and the misuse by no-growth pressure groups of endangered species and environmental protection laws.

We further recognize the need for creating and maintaining informed groups of rural electric members who can be effective spokesmen on energy-related issues and ask that NRECA take the leadership in an effort to assist in the organization of these groups and, further, that it provide timely information which can be used by the local systems to inform these member support groups on current legislative and regulatory issues affecting our program.

WOOD PRESERVATIVES FOR POLE TREATMENT—The Environmental Protection Agency is considering a ban or restriction on the use of wood preservatives, such as pentachlorophenol and creosote, which are extensively used by electrical utilities to increase the life of their powerline poles by over 25 years. Rural electric cooperatives have used wood preservatives for over 40 years with no proven damage to the environment. If wood preservatives are banned or restricted in their use, cooperatives must replace over 30-million treated poles with steel, aluminum, or untreated wood at a capital cost of over $12 billion. This increased capital cost will require rate increases of over 100 percent for cooperatives which have a low consumer density and an average rate increase of over 35 percent for all cooperatives. The replacement of treated wood poles will inflate the price of electricity, deplete our natural resources and create safety hazards due to rotted wood or electrical conducting poles.

We urge that the EPA desist from this ill-advised effort to ban or restrict the use of wood preservatives for electric utility poles. If EPA persists in its efforts, we urge that the Congress enact legislation which will prevent this waste of money and resources on a potentially hazardous program.

FEDERAL COAL LEASING POLICIES AND SURFACE MINING ACT—The Congress of the United States has enacted a Surface Mining Act to provide a framework of law which the states will administer. We believe the rules and regulations developed by the U.S. Department of Interior should be fair and equitable so the job of providing energy for this nation can be accomplished.

The federal government owns tracts of immense coal reserves which are urgently needed, but not released, to alleviate this nation's energy shortages. It is, therefore, puzzling how the Administration can in good faith attempt to encourage consumers to initiate substantial efforts towards energy conservation while, at the same time, compounding the problems by requiring federal coal leasing policies which force coal-fired electrical generating plants away from mining immediate federally owned checkerboard tracts of coal reserves and results in the waste of millions of gallons of oil used out of necessity as a substitute.

We urge that necessary amendments be made to the Mineral Leasing Act of 1920, the Surface Mining and Reclamation Control Act and other federal laws which apply in order to expedite federal coal-leasing policies and eliminate this needless consumption of oil in the national interest.

FISH AND WILDLIFE MITIGATION REQUIREMENTS FOR TRANSMISSION LINES—Currently, state wildlife lands purchased with federal funds or federally owned land or easement areas may not be used for new electric transmission line crossings unless the affected land is replaced by the utility operating the line and unless the Federal Fish and Wildlife Service approves of the replacement.

State and federal agencies apparently assume that the crossing of an electric transmission line over these wildlife lands significantly destroys or degrades the intended purposes for which the land was purchased. This assumption has been made without adequate justification to demonstrate that such damage or degradation exists and the extent of any damage or degradation.

We urge the executive branch to require the Fish and Wildlife Service to assume the burden of proof and establish criteria for the determination of the extent of damage done to these lands by the crossing of electric transmission and/or lines, as well as to establish criteria governing the replacement of these lands at a fair and equitable cost.

Congress should review provisions of the Federal Water Pollution Control Act and the Fish and Wildlife Coordination Act in an effort to determine if in fact the original intent and purpose of these acts have been perverted or distorted beyond their original intent and purpose.

ENVIRONMENTAL PROTECTION—The electric utility industry fully recognizes its responsibilities to locate, construct and operate its facilities in compliance with all applicable laws and standards which are designed to protect the health and welfare of the citizens of this country.

However, the consuming public should be made aware of the fact that many of the regulations promulgated by the various governmental agencies go far beyond Congress' original intent as stipulated in environmental legislation designed to protect the public health and welfare.

Related costs to the electric utility industry and its customers of complying with such overkill structured environmental regulations are horrendous.

We therefore urge Congress to require a review of the regulations resulting from existing laws and subsequently mandate appropriate changes in all instances that are found to go beyond original intent. Following adjustment of existing regulations we urge Congress to closely monitor regulations imposed as a result of new legislation or amendments of existing laws to better insure strict compliance and therefore avoid future costly over-regulation.

IMPLEMENTATION OF THE FEDERAL SURFACE MINING LAW—The Congress of the United States has enacted into law the Surface Mining Control and Reclamation Act to provide a model for states to follow. It was clearly the intention of Congress to provide a law that allows the continued production of coal in an environmentally sound manner and without severe economic penalty to the ultimate consumers of the electric energy that coal ultimately provides.

It has become clear that administration of the Surface Mining Control and Reclamation Act has resulted in unnecessary and costly delays in development of coal mines and in approval by the Office of Surface Mining of mining permits. The Agency's insistence on requiring that environmental impact statements be completed by agencies with primary jurisdiction (Bureau of Land Management and Rural Electrification Administration, for example) before it takes jurisdiction, then proposing to prepare its own EIS independently adds immeasurably and unnecessarily to the cost of mining coal and adds to the costly delays associated with getting mines into production. Further, too strict and ambiguous application of restrictions on the "protection of prime farm lands" and in defining and identifying "alluvial valley floors" in areas where suitable coal deposits exist add other impediments and costs to the economical mining of coal needed by rural electric generating stations. All this increases the costs of power to rural electric system users.

We are particularly troubled by jurisdictional disputes between federal and state officials which add to the level of confusion and frustration on the part of those who are trying to develop coal.

Accordingly, we urge the Department of the Interior to revise its policies and those of OSM to provide for "one-stop service" on permits and EIS examination in reviewing mining plans and permit applications. Further, we urge the Department to accelerate its handling of these matters. NRECA continues to support adequate concern for environmental, economic and social needs but is convinced that there must be equal concern for the costs of delay and over-protection so that implementation of the Act will not make impossible the production of urgently needed coal.

BUREAU OF LAND MANAGEMENT AND OTHER FEDERAL AGENCIES—It is imperative that transmission and distribution facilities be built in a timely fashion to meet the needs of the consumers.

Numerous delays are being encountered with relation to obtaining appropriate rights-of-way over federal lands. These result in excessive delays in construction of the facilities with the end result being higher costs to the ultimate consumer and the unavailability of transmission capacity to meet delivery requirements thus imposing energy curtailment which is not in the best interests of the Nation's health and welfare.

While we do not object to application filing fees for permits, we do believe strongly that costs for studies and monitoring compliance should be borne by the requiring agencies.

Prolonged and extensive delays have been experienced in obtaining approvals from the Bureau of Land Management, U.S. Forest Service, and other federal agencies on right-of-way applications.

We urge the Administration to take positive action to expedite right-of-way applications and the Congress to hold oversight hearings to make federal agencies aware of the results of their delays and to press for the expeditious handling of said applications at reasonable costs.

Enclosure 2

Permits and Licenses 3-1-79

CPA/UPA COAL CREEK STATION

PURPOSE	ISSUING AGENCY	STATUS
Federal		
Final Environmental Impact Statement	Rural Electrification Administration	Issued 8/6/74
Determination of no hazard to air navigation (chimneys)	Federal Aviation Administration	Issued 3/4/75
Determination of no hazard to air navigation (lignite storage silos)	Federal Aviation Administration	Issued 7/11/77
Determination of no hazard to air navigation (generation building)	Federal Aviation Administration	Issued 2/8/78
Water intake construction	U. S. Army Corps of Engineers	Issued 4/17/78
State		
Surface water appropriation	North Dakota State Water Commission	Issued 7/24/74
Ground water appropriation (temporary)	North Dakota State Water Commission	Issued 10/9/75
Increased ground water appropriation	North Dakota State Water Commission	Issued 2/21/78
Surface water impoundments	North Dakota State Water Commission	Issued 8/21/78
Construct sewage treatment plant	North Dakota Department of Health	Issued 1/14/75
Water well construction	North Dakota Department of Health	Issued 12/2/74
Conditional approval to construct (air)	North Dakota Department of Health	Issued 4/11/75
Solid waste disposal (construction)	North Dakota Department of Health	Issued 8/19/77
Site compatibility (water line)	North Dakota Public Service Commission	Issued 4/8/76
Route designation (water line)	North Dakota Public Service Commission	Issued 6/15/77
NPDES permit (water intake construction)	North Dakota Department of Health	Issued 3/28/78
Sanitary landfill	North Dakota Department of Health	Application 10/27.
Surface Water Impoundments (East Ponds)	North Dakota State Water Commission	Application 2/7/7

Permits and Licenses 3-1-79

CPA/UPA COAL CREEK STATION
(continued)

PURPOSE	ISSUING AGENCY	STATUS
Local		
Zoning map amendment	McLean County Board of Commissioners	Issued 3/6/75
Conditional use permit	McLean County Board of Commissioners	Issued 3/6/75
Conditional use permit (water line)	McLean County Board of Commissioners	Issued 10/3/75
Conditional use permit (air monitoring)	McLean County Board of Commissioners	Issued 6/27/77
Land use approval (air monitoring)	Washburn City Commission	Issued 6/21/77

Notes:

In preparation--Application being prepared by CPA/UPA and/or B&V or CAI.
Pending--Application submitted by CPA/UPA, but agency has not taken final action.

Permits and Licenses 3-1-79

CPA/UPA TRANSMISSION FACILITIES

PURPOSE	ISSUING AGENCY	STATUS
Federal		
Final Environmental Impact Statement	Rural Electrification Administration	Issued 8/6/74
Construction near navigable streams (Minnesota)(TR-2)	U. S. Army Corps of Engineers	Pending
Construction near navigable streams (Missouri)	U. S. Army Corps of Engineers	Issued 4/17/78
Construction near navigable streams (Bois de Sioux)	U. S. Army Corps of Engineers	Issued 1/3/78
Construction near navigable streams (Mississippi)	U. S. Army Corps of Engineers	Issued 3/8/78
Wetland easement crossing (N. D.)	U. S. Fish and Wildlife Service	Issued 6/28/77
Wetland easement crossing (Minn.)	U. S. Fish and Wildlife Service	Issued 5/18/78
Wetland crossing (Minn.)	U. S. Fish and Wildlife Service	Issued 6/9/78
State		
Certificate of corridor compatibility (dc)	Minnesota Environmental Quality Board	Issued 10/9/75
Construction permit (dc)	Minnesota Environmental Quality Board	Issued 6/3/76
Certificate of corridor compatibility (ac)	Minnesota Environmental Quality Board	Issued 5/7/76
Construction permit (ac)	Minnesota Environmental Quality Board	Issued 4/11/77
Certificate of Need	Minnesota Energy Agency	Issued 4/2/76
Land crossing (Kandiyohi) dc	Minnesota Department of Natural Resources	Issued 9/29/77
Water crossing (Kandiyohi) dc	Minnesota Department of Natural Resources	Issued 7/13/77
Water crossing (Traverse) dc	Minnesota Department of Natural Resources	Issued 11/10/77
Water crossing (Stearns) dc	Minnesota Department of Natural Resources	Issued 7/13/77
Water crossing (Meeker) dc	Minnesota Department of Natural Resources	Issued 9/3/77
Water crossing (Wright) dc	Minnesota Department of Natural Resources	Issued 7/13/77
Water crossing (Pope) dc	Minnesota Department of Natural Resources	Issued 8/31/77
Water crossing (Stevens) dc	Minnesota Department of Natural Resources	Issued 11/10/77
Water crossing (Grant) dc	Minnesota Department of Natural Resources	Issued 9/21/77
Water crossing (Wright) ac	Minnesota Department of Natural Resources	Issued 1/18/78
Water crossing (Hennepin) ac	Minnesota Department of Natural Resources	Issued 1/13/78
Water crossing (Anoka) ac	Minnesota Department of Natural Resources	Issued 1/18/78
Water crossing (Wright) TR-2	Minnesota Department of Natural Resources	Issued 1/4/79
Water crossing (Carver) TR-2	Minnesota Department of Natural Resources	Issued 1/4/79
Water crossing (Sibley) TR-2	Minnesota Department of Natural Resources	Issued 1/4/79
Water crossing (LeSueur) TR-2	Minnesota Department of Natural Resources	Issued 1/4/79
Water crossing (Scott) TR-2	Minnesota Department of Natural Resources	Issued 1/4/79
Water crossing (Blue Earth) TR-2	Minnesota Department of Natural Resources	Issued 1/4/79
Land crossing (Carver) TR-2	Minnesota Department of Natural Resources	Issued 1/24/79
Land crossing (Carver-Trail) TR-2	Minnesota Department of Natural Resources	Application 2/15/79

CPA/UPA TRANSMISSION FACILITIES
(continued)

PURPOSE	ISSUING AGENCY	STATUS
State (continued)		
Ground water appropriation (Dickinson Terminal)	Minnesota Department of Natural Resources	Issued 5/17/77
Site compatibility (dc)	North Dakota Public Service Commission	Issued 4/8/76
Route designation (dc)	North Dakota Public Service Commission	Issued 12/17/76
Site compatibility (ac)	North Dakota Public Service Commission	Issued 2/28/77
Route designation (ac)	North Dakota Public Service Commission	Issued 9/8/77
Highway crossings (dc)	North Dakota Highway Department	Issued 3/22/76
Highway crossings (dc)	Minnesota Department of Highways	Issued 11/3/77
Highway crossings (ac)	Minnesota Department of Highways	Issued 10/31/77
Highway crossings (TR-2)	Minnesota Department of Highways	In preparation
Water discharge (NPDES) (Dickinson)	Minnesota Pollution Control Agency	Issued 9/30/77
PCB exemption (Dickinson)	Minnesota Pollution Control Agency	Issued 9/26/7[illegible]
State land crossings	North Dakota State Land Department	Issued 8/25/77
Local		
Conditional use permit (dc)	McLean County Board of Commissioners	Issued 9/26/77
Conditional use permit (ac)	McLean County Board of Commissioners	Issued 9/26/77
Conditional use permit (ac)	Mercer County Board of Commissioners	Issued 5/3/77
Highway crossings (dc)	Meeker County Highway Department	Issued 3/15/78
Highway crossings (dc)	Stearns County Highway Department	Issued 12/6/77
Highway crossings (dc)	Pope County Highway Department	Issued 1/27/78
Highway crossings (dc)	Stevens County Highway Department	Issued 11/30/77
Highway crossings (dc)	Grant County Highway Department	Issued 12/1/77
Highway crossings (dc)	Wright County Highway Department	Issued 6/6/78
Highway crossings (ac)	Wright County Highway Department	Issued 3/13/78
Highway crossings (ac)	Hennepin County Highway Department	Issued 10/19/77
Highway crossings (TR-2)	Wright County Highway Department	In preparation
Highway crossings (TR-2)	Carver County Highway Department	In preparation
Highway crossings (TR-2)	Sibley County Highway Department	In preparation
Highway crossings (TR-2)	Scott County Highway Department	In preparation
Highway crossings (TR-2)	LeSueur County Highway Department	In preparation
Highway crossings (TR-2)	Blue Earth County Highway Department	In preparation

Notes:
In preparation--Application being prepared by CPA/UPA and/or B&V or CAI.
Pending--Application submitted by CPA/UPA but agency has not taken final action

Permits and Licenses

MBPP Laramie River Station

PURPOSE	ISSUING AGENCY	STATUS
Federal		
National Environmental Policy Act Determination	USDA-REA	Issued 5/28/76
Aeronautical Permit for Chimney	Federal Aviation Administration	Issued 7/2/76
Spill Prevention Control and Counter Measure Plan	U.S. Environmental Protection Agency and Wyoming Dept. of Environmental Quality	Prepared but not submitted
Aeronautical Permit for Coal Silos	Federal Aviation Administration	Issued 3/77
Permit for the Prevention of Significant Deterioration	U.S. Environmental Protection Agency	Issued 12/24/76
State		
Permit to Appropriate Groundwater (plant site)	Wyoming State Engineer	Issued 10/28/75
National Pollutant Discharge Elimination System (NPDES) Discharge Permit	Wyoming Dept. of Environmental Quality	Issued 12/24/75
Certificate of Public Convenience and Necessity	Wyoming Public Service Commission	Issued 6/24/76
Industrial Siting Permit	Wyoming Industrial Siting Council	Issued 4/26/76
Order to appear and demonstrate compliance with permit conditions	Wyoming Industrial Siting Council	Issued 5/19/77
Solid Waste Disposal Permit for Construction Waste Material	Wyoming Dept. of Environmental Quality	Issued to N.P.V. Construction Co.

Permits and Licenses

MBPP Laramie River Station
(continued)

PURPOSE	ISSUING AGENCY	STATUS
State (continued)		
Solid Waste Disposal Permit for Industrial Wastes	Wyoming Dept. of Environmental Quality	Pending
Construction Permit (Div. of Air Quality)	Wyoming Dept. of Environmental Quality	Issued 5/14/76
Operating Permit (Div. of Air Quality)	Wyoming Dept. of Environmental Quality	In preparation
Permit to Construct Public Water Supply	Wyoming Dept. of Environmental Quality	Issued 7/7/76
Permit to Construct Ash Pond	Wyoming State Engineer	Issued 10/5/77
Approval of Bottom Ash Pond	Wyoming Dept. of Environmental Quality	Pending
Permit to Construct Reservoir for On-Site Raw Water Storage	Wyoming State Engineer	Issued 7/16/76
Permit to Construct Reservoir for Storm Water Runoff	Wyoming State Engineer	Issued 7/6/76
Construction Permit for Waste-Water Treatment System	Wyoming Dept. of Environmental Quality	Issued 7/7/76
Construction Water Supply	Wyoming State Engineer	Issued until 6/1
Local		
Local Zoning	Platte County Commissioners	Issued 3/5/75

Permits and Licenses

MBPP Grayrocks Dam and Reservoir

PURPOSE	ISSUING AGENCY	STATUS
Federal		
Dredge and Fill (404) Permit for Construction of Grayrocks Dam	U.S. Army Corps of Engineers	Pending
Right-of-Way Approval of Lands to be Inundated by Grayrocks Reservoir and Also Right-of-Way for Pipeline Crossing	U.S. Dept. of the Interior-BLM	Issued 8/24/77
Right-of-Way Platte County Road Relocation	U.S. Dept. of the Interior-BLM	Issued 8/2/77
Transfer of Federal Mineral Leases-Grayrocks Reservoir	U.S. Dept. of the Interior-BLM	Issued 8/17/76
Dredge and Fill (404) Permit for Platte County Bridge	U.S. Army Corps of Engineers	Issued 10/25/77
State		
Permit to Appropriate Surface Water (Grayrocks Reservoir)	Wyoming State Engineer	Issued 2/11/75
Permit to Appropriate Surface Water (Water Treatment Tests)	Wyoming State Engineer	Issued 8/28/75
Permit to Divert Water (Laramie River Pipeline)	Wyoming State Engineer	Issued 2/11/75
Approval of Final Construction Plans for Grayrocks Reservoir	Wyoming State Engineer	Issued 6/3/77

Permits and Licenses

MBPP Gravrocks Dam and Reservoir
(continued)

PURPOSE	ISSUING AGENCY	STATUS
State (continued)		
Change of Water Appropriation Permits for Boughton Ditch Water	Wyoming State Board of Control	Issued 5/76
Permit to Appropriate Groundwater (Johnson Wells) for Industrial Use	Wyoming State Engineer	Issued 8/26/77
Revision of Water Appropriation Permits for Inundated Area	Wyoming State Board of Control	Issued 10/6/77
Petition Application for Transfer of Existing Plant Site Water Rights	Wyoming State Board of Control	Pending
Mining Permit to Excavate Dam Construction Material	Wyoming Dept. of Environmental Quality	Issued 3/16/77
License to Explore	Wyoming Dept. of Environmental Quality	Issued 7/28/76

Permits and Licenses

MBPP Transmission Facilities

PURPOSE	ISSUING AGENCY	STATUS
Federal		
Rights-of-Way and Easements of Federal Lands	U.S. Dept. of the Interior-LBM	Pending
State		
Certificate of Public Convenience & Necessity Transmission Line Approval	Wyoming Public Service Commission	Issued 5/26/77
Approval of Construction of Transmission Lines	Nebraska Power Review Board	Issued 5/77
Design Approved Transmission Line	Nebraska Public Service Commission	In preparation
Certificate of Public Convenience and Necessity (west side)	Colorado Public Service Commission	Issued 9/8/76
Transmission Center-Line Approval	Wyoming Industrial Siting Council	
(Dave Johnston)		Issued 10/7/77
(East Side)		Pending
(West Side)		In preparation
Local		
Transmission Line Permit	Morgan and Weld Counties, Colorado	Pending

Enclosure 3

COLORADO-UTE ELECTRIC ASSOCIATION, INC.

Comparative Study of the Costs of Compliance With Governmental Regulation

Twelve Months Ended June 30, 1978

May 4, 1979

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I. Introduction

During 1978, Colorado-Ute Electric Association, Inc. developed a study of the costs of compliance with governmental regulations, primarily in the environmental area. This study was conducted for the purpose of use in sworn testimony and exhibits of Colorado-Ute witnesses before the Colorado Public Utilities Commission in its 1978 rate case. It has also been used to provide information to legislative committees and other regulatory bodies. This study was not intended for the purposes of passing judgement on governmental regulations as being "necessary" or "unnecessary", but rather for the purposes of identifying the cost of regulatory compliance to Colorado-Ute and ultimately to the consumers supplied by Colorado-Ute. Colorado-Ute had not originally intended to publish the study in a form other than as testimony and exhibits; however, due to the numerous requests for information from various individuals, legislators and governmental bodies, Colorado-Ute has provided this study in a more convenient form for public use.

II. General Description of Colorado-Ute

Colorado-Ute Electric Association, Inc. is a public utility operating in the state of Colorado and headquartered in Montrose, Colorado. Colorado-Ute operates as a non-profit, member-owned cooperative and is principally engaged in the business of providing wholesale electric service to its thirteen member distribution cooperative associations.

Colorado-Ute's thirteen members are locally-owned consumer cooperatives that are principally engaged in the business of providing retail electric service to their consumer members. In general, the membership of these cooperatives is composed of residential, recreational, commercial and industrial consumers within the cooperatives retail service area. The member cooperatives supply their member consumers load requirements through bulk purchases of power and energy from Colorado-Ute. The retail service areas of Colorado-Ute's member distribution cooperatives encompasses approximately one half of the land area within the state of Colorado, including all or a portion of 41 of the state of Colorado's 63 counties. Colorado-Ute and its thirteen members together compose the second largest electric utility in the state of Colorado in the terms of number of consumers served and annual energy sales to consumers.

III. Overview of Study Elements

A. Summary of Generation and Transmission Systems

In order to meet its members load requirements, Colorado-Ute supplies power and energy primarily from its own generating resources and from purchases from other power supply entities. Colorado-Ute presently owns and operates the following electric generating plants:

	Net Capacity Available
1. Hayden Unit 1	184 mw
2. Hayden Unit 2 (20% ownership of 262 mw total capacity)	52 mw
3. Nucla Station	36 mw
4. Bullock Station	12 mw
5. Tacoma and Ames Hydro	11 mw

Hayden Unit 1, Hayden Unit 2, Nucla Station and Bullock Station are coal-fired steam electric generation plants and Tacoma and Ames Stations are hydro-electric generation plants. In addition to generating plants now in service, Colorado-Ute is one of the four participants in the Yampa Project, which consists of Craig Station, a two unit 800 mw coal-fired steam electric generating plant now under construction at Craig, Colorado, and related transmission facilities. The two units are scheduled to be in commercial operation by 1979 and 1980. Colorado-Ute is both project manager and operating agent and owns a 29% undivided interest in the Craig Station. Upon commercial operation, the net capacity available to Colorado-Ute from Craig Station Units 1 and 2 will be approximately 232 mw.

Colorado-Ute currently plans to construct a third coal-fire steam generation unit at the Craig Station. This unit is scheduled for completion and commercial operation in 1983 and will entitle Colorado-Ute to an available net capacity of 400 mw.

Colorado-Ute delivers power and energy to its thirteen members over its own transmission system, consisting of approximately 1,062 miles of high voltage transmission lines and 41 substations, and over the interconnected high voltage transmission systems of other power supply entities pursuant to the contractual terms of a variety of interconnection, wheeling and displacement arrangements.

B. Objectives and Scope of Study

Due to the fact that the study of the cost of compliance with governmental regulation was developed for use by Colorado-Ute witnesses in a rate case before the Colorado Public Utilities Commission, the period of the study, the twelve months ended June 30, 1978, coincides with the test year that Colorado-Ute used in developing its rate case. The main objectives of the study were as follows:

1. To examine and quantify the operating costs of compliance with governmental regulation where directly ascertainable.
2. To compare these costs with total operating costs.
3. To examine and quantify the capital costs of compliance with governmental regulation where directly ascertainable.
4. To compare these costs with total capital costs.

Colorado-Ute was able to ascertain the direct costs of compliance with governmental regulation with respect to the area of coal-fired steam generation production operating and capital costs as this is the area where governmental regulation has had a major identifiable impact upon the operating costs of Colorado-Ute. Colorado-Ute has so far not been impacted greatly in the areas of hydroelectric production operating costs and has not had any recent direct experience in the construction of hydroelectric generation facilities. For these reasons, no effort was made to ascertain the cost components affecting hydroelectric facilities that are directly related to governmental regulation.

In the area of transmission system operating costs, Colorado-Ute was not able to quantify the total costs of compliance with governmental regulations due to the time limitations of the study, the geographical diversity of the terrain which would affect costs and the sheer bulk of the data that would have to be analyzed. The analysis of regulatory costs in the transmission area was limited to examples of recent transmission line construction costs and the cost components relating to governmental regulations. The results of this analysis is included in this study.

It should be noted that the regulatory costs used in this study represent only directly identifiable major costs components. No attempt has been made to quantify those regulatory costs that are paid by Colorado-Ute indirectly, and therefore, cannot be definitely ascertained. For example, the study does not include, among others, the following major indirect cost items:

1. Regulatory costs hidden in the price of materials used in generating plant construction, such as steel and cement.
2. Reclamation and other regulatory costs included in the price of fuel purchased by Colorado-Ute, unless passed on directly to Colorado-Ute.

The study also does not include those direct regulatory costs that consist of a multitude of small items, or where the costs are known to exist but the amounts are somewhat speculative. The following are examples of this category of regulatory costs excluded from the study:

1. OSHA regulations requiring safety devices, imposing operating limitations, and similar items.
2. Public Utilities Commission fees,

hearing costs, reporting requirements, and added financing costs.
3. Federal Energy Regulatory Commission reporting requirements.
4. Local building permits and minor zoning restrictions.
5. Cost of continuous analysis of new regulations to determine applicability to Colorado-Ute's business.

The above lists of excluded regulatory costs are only representative of the many items that could properly be included if the data were available and could be reasonably analyzed.

It should be further noted that the costs contained in this study represent the costs that were associated with the existing regulatory compliance costs at the time the study was prepared; no estimates of the impact of any new or proposed changes in environmental regulations were made. Some changes in environmental regulations have already occurred since this study was made.

C. Conclusions of the Study

1. Steam Generation

The study concludes that the direct identificable annual cost of compliance with governmental regulations during the period of this study amounted to 35% of the total cost of production at steam generation plants. It further concludes that the direct identifiable annual cost of compliance with governmental regulations is estimated to be 45% of the annual costs of production for Craig Station Units 1 and 2, when these units are placed in commercial operation (calendar year 1980 costs).

From these numbers, it is a reasonable inference that if all direct and indirect regulatory costs were included, the cost of compliance with governmental requirements would substantially exceed half of the total cost of generating electric power by Colorado-Ute.

Schedules 1 through 3 set forth the summary of costs involved. Supporting schedules 4 through 10 show a detailed distribution of the cost factors.

2. Transmission

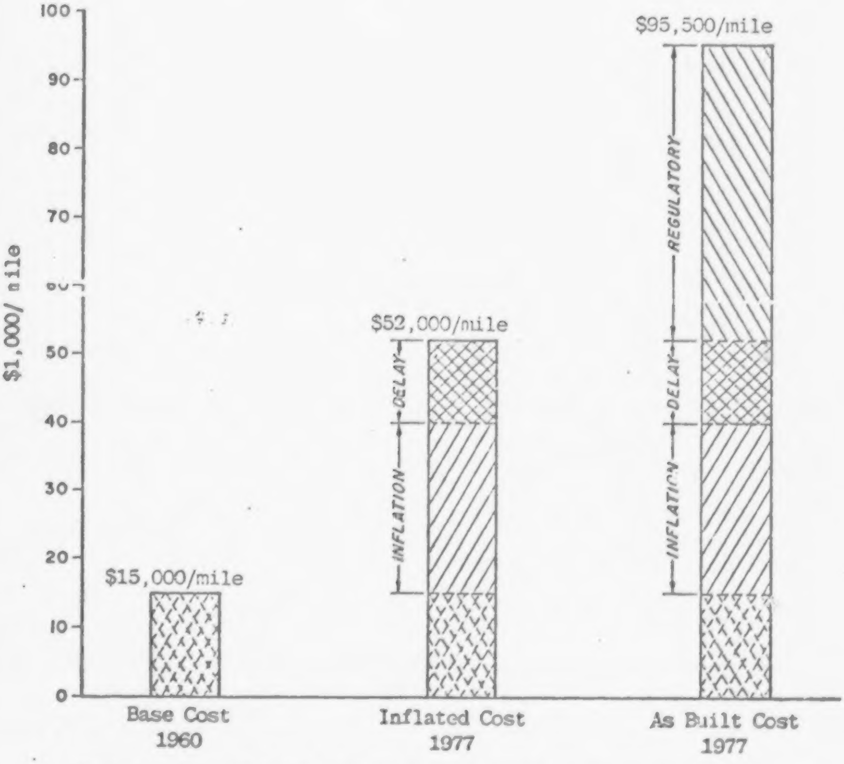
In the area of transmission facilities construction costs, Colorado-Ute analyzed the cost of construction of the Bayfield-Pagosa 115 kV line, which was completed and placed in service in 1978, approximately 3 1/2 years behind its scheduled completion. The total cost of construction of this line amounted to $3.5 million, including estimated regulatory costs for federal permit requirements of $1.6 million. Inflation during the 3 1/2 years of regulatory delay is estimated to represent another approximate $450,000 of the cost. The regulatory compliance cost of this 37-mile line is estimated to be 59% of the total cost. In addition, during the 3 1/2 year delay, additional transmission line losses worth approximately $22,000 were experienced because an alternate, less efficient transmission system had to be used while the new Bayfield-Pagosa line was delayed by regulatory action.

Another example, the Basalt-Aspen 115 kV line, was delayed for approximately 3 years by federal and local government action, principally because of environmental concerns. This line was finally completed and placed in service at a construction cost of $2.2 million. On this line, the estimated regulatory cost component is estimated to be $700,000 and inflation during the 3 years of regulatory delay is estimated to be another $350,000 of the cost. The total regulatory compliance cost of this line is estimated to be 49% of the total cost. In addition, during the 3 year delay, additional transmission lines losses worth approxmately $104,300 were experienced because an alternate less efficient transmission system had to be used while the Basalt-Aspen line was delayed by regulatory action.

Figure 1 is a graphic illustration of the increases in transmission lines due to governmental regulations and is based upon the example of the Bayfield-Pagosa 115 kV line that was mentioned before. Schedules 11 and 12 set forth the components of the Bayfield-Pagosa and Basalt-Aspen 115 kV line actual construction costs and 1974 and 1977 normal construction costs excluding regulatory requirements costs.

Figure 1

TRANSMISSION LINE CONSTRUCTION COST



Cost is for a 115 kV wood pole line built in mountainous terrain. The 1977 as built cost is for the Bayfield-Pagosa 115 kV line completed in 1977.

INFLATION represents the increases in labor and materials from 1960 to 1974.

DELAY represents the increases in labor and materials from 1974 to 1977.

IV. Methodology of Study

A. Cost Components Studied - Steam Generation

In the area of identifying the operating costs of compliance with environmental regulations with respect to steam generation plant, Colorado-Ute examined the following cost components:

1. Labor and associated payroll overheads
2. Fuel expense
3. Materials and supplies and other costs
4. Additional power costs
5. Fixed costs on pollution control equipment
    a. Depreciation
    b. Property Taxes
    c. Interest Expense
    d. Property Insurance
6. Administrative and general expense

Labor and associated payroll overhead expenses represent the cost of plant operations and maintenance personnel that are specifically assignable to the operations, maintenance and testing requirements of pollution control equipment. Also included were estimates of the cost of supervision of these functions by plant supervisory personnel. For example, of the total manpower requirement of 169 personnel necessary to operate Hayden Station, Units 1 and 2, 54 of these 169 personnel are required for the operation, maintenance and testing requirements of pollution control equipment.

Fuel expenses represents the portion of Colorado-Ute's fuel expense that were directly attributable to environmental taxes or legislation at the time this study was prepared. These costs include:

1. Reclamation costs, if specifically passed on to Colorado-Ute
2. Surface Mine Control and Reclamation Act taxes
3. Colorado Severance taxes
4. Federal Black Lung taxes

Materials and supplies and other costs represent the direct costs of materials, supplies and replacement parts issued on a routine basis and other expenses associated with the operation, maintenance and testing requirements of the pollution control equipment.

Additional power costs represents a pro rata estimate of the cost of capacity lost in the generation station by the addition of pollution control equipment plus the cost of energy needed to operate the equipment.

Depreciation, property tax, interest expense and property insurance represent the fixed costs that are associated with the pollution control equipment installed. The pollution control equipment represented major component systems that Colorado-Ute installed or retrofitted to existing plant in order to comply with government regulation. These facilities are briefly summarized in the section, "Summary of Pollution

Control Removal Systems". Administrative and general costs represent the administrative costs associated with the operation and maintenance of pollution control equipment installed and compliance with directly identifiable regulatory requirements.

B. Cost Components Studied - Transmission Lines

In the area of analysis of the impact of government regulation on construction of transmission facilities, the main result of these regulations has been to lengthen the time period required for construction which increase the cost of construction due to inflation and interest charges during construction. Some of the main governmental regulations that affected Colorado-Ute are federal regulations with regard to:

1. Line routing
2. Right-of-way clearing
3. Obtaining permits
4. Preparation of additional studies
5. Requirements for additional hearings

Colorado-Ute's transmission system is particularly affected by federal requirements because most of the land in Western Colorado is federally owned and subject to Bureau of Land Management or United States Forest Service control.

Changes in requirements for routing transmission line corridors away from existing highway corridors so as to hide transmission lines from public view requires the use of special construction equipment, particularly in mountainous terrain. In most cases, this requires special overland vehicles or the extensive use of helicopter construction because of Bureau of Land Management and Forest Service limitations on the amount of construction access roads that are permitted to be constructed. Where right-of-way clearing is required, clear cutting may not be permitted and new regulations require feathering techniques which may involve landscaping and special cutting for distances up to 800 feet on either side of the center line. Because of the lengthening of construction time due to obtaining permits, preparation of additional studies and requirements for additional hearings, the construction costs of transmission facilities increase greatly because of the substantial delay caused by these requirements.

C. Summary of Pollution Control Removal Systems

The following is a brief summary of the major components of pollution control systems that Colorado-Ute had installed for Hayden Station, Nucla Station and Bullock Station that was analyzed for the purposes of this study.

Hayden Station

1. Hotside electrostatic precipitators
2. Flyash and bottom ash removal systems
3. Ash hauling equipment and disposal site (to the extent not required for operational purposes)

4. Waste water concentration system including holding ponds and evaporation ponds
5. Coal yard drain ponds
6. Ambient air monitoring systems
7. Nitrous oxide reduction boiler design on Unit 2
8. Increased stack height on Unit 2 for better dispersal of emissions

Nucla Station

1. Fabric filter baghouse collection system
2. Ash hauling equipment and disposal site (to the extent not required for operational purposes)
3. Cooling tower system
4. Evaporation ponds and holding ponds
5. Water piping modifications for elimination of thermal and water discharge pollution

Bullock Station

1. Fabric filter baghouse collection system
2. Ash hauling equipment and disposal site (to the extent not required for operational purposes)
3. Evaporation ponds
4. Modification of drain piping to eliminate waste discharge pollution

In addition, Hayden Station at the time that this study was prepared was anticipated to be required to install retrofitted sulfur dioxide removal systems by 1985. A recent relaxation of regulations may make this installation of retrofitted sulfur dioxide removal systems unnecessary.

At the Yampa Project, the following major components of pollution control systems are being constructed:

Craig Station - Units 1 and 2

1. Hotside electrostatic precipitators
2. Sulfur dioxide removal system

3. Flyash and bottom ash removal systems (to the extent not required for operational purposes)
4. Ash and sludge hauling equipment and disposal site
5. Increased stack height for better dispersal of emmissions
6. Nitrous oxide reduction boiler design
7. Fugitive dust suppression systems at various plant site locations
8. Waste water concentration system including holding ponds and evaporation ponds
9. Coal yard drain pool
10. Sewage and plant waste drain system
11. Ambient air monitoring system

V. Summary

One of Colorado-Ute's basic policies has been a full commitment to the protection of the environment. Colorado-Ute believes that economic growth and environmental protection can be compatible. However, it is Colorado-Ute's position that the effects of governmental regulation needs to be balanced reasonably against costs. Colorado-Ute has an obligation to the member consumers that it supplies to keep all costs, including the cost of environmental protection, as low as possible. Colorado-Ute is greatly concerned that the present costs of compliance with governmental regulations may be only the tip of the iceberg, particularly when new governmental regulations or modification of existing governmental regulations are being promulgated every year.

Schedule 1

COLORADO-UTE ELECTRIC ASSOCIATION, INC.
COMPARISON OF COSTS OF COMPLIANCE WITH EXISTING GOVERNMENTAL REGULATIONS TO TOTAL PRODUCTION COSTS FOR ALL STEAM GENERATING STATIONS

Twelve Months Ended June 30, 1978
($1,000)

	Cost of Compliance With Governmental Regulations	Total Production Costs
Operation & Maintenace		
Labor	$ 652.9	$ 2,419.7
Fuel Costs	1,127.1	8,250.7
Materials, Supplies and Other Expenses	481.9	1,922.4
Additional Power	2,125.6	
Subtotal	4,387.5	12,592.8
Fixed Costs		
Depreciation	1,469.9	3,362.8
Taxes	266.9	1,004.2
Interest	1,035.9	3,555.0
Insurance	156.7	606.1
Subtotal	2,929.4	8,528.1
Administrative & General Expense	823.1	2,376.0
Total Production Costs	$8,140.0	$23,496.9

% Cost of Compliance to Production Costs
$8,140.0/$23,496.9 = 34.64%

COLORADO-UTE ELECTRIC ASSOCIATION, INC.
COSTS OF COMPLIANCE WITH EXISTING GOVERNMENTAL REGULATIONS FOR STEAM GENERATING STATIONS

Twelve Months Ended June 30, 1978
($1,000)

	Hayden Unit 1	Hayden Unit 2 (CUEA Portion)	Nucla Station	Bullock Station	Total
Operation and Maintenance					
Labor	$ 420.1	$ 117.1	$ 51.6	$ 64.1	$ 652.9
Fuel Costs	777.5	241.1	93.1	15.4	1,127.1
Materials, Supplies and Other Expenses	231.4	90.8	125.0	34.7	481.9
Additional Power and Energy	1,410.4	503.1	155.1	57.0	2,125.6
Subtotal	2,839.4	952.1	424.8	171.2	4,387.5
Fixed Costs					
Depreciation	615.7	419.9	233.8	200.5	1,469.9
Taxes	111.6	66.1	51.3	37.9	266.9
Interest	419.6	288.9	139.5	187.9	1,035.9
Insurance	87.6	26.4	11.8	30.9	156.7
Subtotal	1,234.5	801.3	436.4	457.2	2,929.4
Administrative and General Expense	458.4	197.2	96.7	70.8	823.1
Total	$4,532.3	$1,950.6	$957.9	$699.2	$8,140.0

Schedule 2

Schedule 3

COLORADO-UTE ELECTRIC ASSOCIATION, INC.
COSTS OF COMPLIANCE WITH EXISTING GOVERNMENTAL REGULATIONS FOR CRAIG STATION 1 & 2

Projected Twelve Months Ended December 31, 1980
($1,000)

	Estimated Cost of Compliance With Governmental Regulations	Estimated Total Production Costs
Operation & Maintenance		
Labor	$ 738.2	$ 1,641.2
Fuel Costs	1,008.0	8,190.0
Materials, Supplies and Other Expenses	1,044.7	1,326.6
Additional Power and Energy Costs	4,482.1	-0-
Subtotal	7,273.0	11,157.8
Fixed Costs		
Depreciation	3,469.2	6,559.2
Taxes	[illegible]02.0	2,764.4
Interest	4,196.9	16,100.5
Insurance	173.9	659.8
Subtotal	9,442.0	26,083.9
Administrative and General Expense	1,207[illegible]	2,689.6
Total Production Costs	$17,922.0	$39,931.3

% Cost of Compliance to Production Costs
$17,922.0/$39,931.3 = 44.88%

Schedule 4

COLORADO-UTE ELECTRIC ASSOCIATION, INC.
SUMMARY OF LABOR AND MATERIALS AND SUPPLIES COSTS OF COMPLIANCE WITH GOVERNMENTAL REGULATIONS

Twelve Months Ended June 30, 1978
($1,000)

	Hayden Unit 1	Hayden Unit 2	Nucla Station	Bullock Station	Total
Labor:					
Plant Supervisory Personnel(1)	$101.0	$ 28.2	$ 12.8	$ 9.0	$151.0
Operation and Maintenance					
Ash Collection and Disposal Costs(2)	169.2	47.1	30.9	55.1	302.3
Water Treatment System(3)	102.5	28.6	5.5	xx	136.6
Air and Water Quality Control(4)	24.6	9.6	xx	xx	34.2
Air and Gas Handling System(5)	22.8	3.6	2.4	xx	28.8
Total	$420.1	$117.1	$ 51.6	$64.1	$652.9
Materials and Supplies and Other Costs:					
Ash Collection and Disposal Costs(2)	$165.9	$ 39.1	$ 99.0	$34.7	$338.7
Water Treatment System(3)	10.9	4.2	24.8	xx	39.9
Air and Water Quality Control(4)	39.3	19.1	0.1	xx	58.5
Air and Gas Handling System(5)	15.3	28.4	1.1	xx	44.8
Total	$231.4	$ 90.8	$125.0	$34.7	$481.9

(1) Represents the labor of plant supervisory personnel allocated to supervision of operation and maintenance of pollution control equipment

(2) Represents operations and maintenance costs of collection, handling and disposal of bottom ash and fly ash beyond normal operational requirements

(3) Represents operations and maintenance costs for treatment of water required by governmental regulations

(4) Represents the operations and maintenance expense associated with the ambient air and water quality and meterological monitoring programs required by governmental regulation

(5) Represents the operations and maintenance expenses associated with air and gas handling requirements due to governmental regulations

Note: xx denotes costs that are less than $100.00

Schedule 5

COLORADO-UTE ELECTRIC ASSOCIATION, INC.
SUMMARY OF FUEL COSTS OF COMPLIANCE
WITH GOVERNMENTAL REGULATIONS
Twelve Months Ended June 30, 1978
($1,000)

	Hayden Unit 1	Hayden Unit 2	Nucla Station	Bullock Station	Total
Reclamation Costs(1)	$ 51.9	$ 16.2	$ -0-	$ -0-	$ 68.1
Surface Mine Control and Reclamation Act Taxes	302.7	94.1	26.9	-0-(2)	423.7
Colorado Severance Taxes	333.3	103.1	46.9	10.3	493.6
Federal Black Lung Taxes	89.6	27.7	19.3	5.1	141.7
Total	$ 777.5	$ 241.1	$ 93.1	$ 15.4	$1,127.1
Tons of Coal Consumed	548,620	170,505	76,218	33,398	828,741

(1) Colorado-Ute purchases the majority of its coal under long term contractual arrangements under which a base price is established at the time the contract is entered into. The price of coal then fluctuates from the base price under the terms of the contract as the costs of producing the coal increases to the supplier. The costs associated with reclamation costs above represents only that portion of coal price component that is above and beyond the costs of reclamation included in the contractual base price of the coal. Hayden Unit 1, Hayden Unit 2 and Nucla Station coal is purchased under the terms of long term contracts. Bullock Station coal requirements are purchased on the spot market basis. The difference between Hayden Station and Nucla Station represents the time frame between the signing of these contracts. The Hayden Station fuel agreement was entered into in December, 1971, and the Nucla Station fuel agreement was entered into in December of 1974.

(2) Because of the price component structure of spot market purchases at Bullock Station, Colorado-Ute was not able to identify the amount pertaining to Reclamation costs or Surface Mine Control and Reclamation Act taxes.

Schedule 6

COLORADO-UTE ELECTRIC ASSOCIATION, INC.
SUMMARY OF ADDITIONAL POWER AND ENERGY
COSTS OF COMPLIANCE WITH GOVERNMENTAL REGULATIONS
Twelve Months Ended June 30, 1978
($1,000)

	Hayden Unit 1	Hayden Unit 2	Nucla Station	Bullock Station	Total
Additional Power and Energy:					
Pollution Control Equipment Energy Requirements-mwh	23,156.3	6,129.6	3,516.2	1,401.7	34,203.8
Pollution Control Equipment Energy Costs:(1)	$ 578.9	$ 153.2	$ 87.9	$ 28.7	$ 848.7
Pro Rata Generation Costs(2)	90.1	23.6	51.2	24.8	189.7
Maintenance Down Time Costs(3)	741.4	326.3	16.0	3.5	1,087.2
Total	$1,410.4	$ 503.1	$ 155.1	$ 57.0	$2,125.6

(1) Represents costs of replacement energy requirements for operation of pollution control equipment

(2) Represents a pro rata estimate of the operating costs capacity lost by installation of pollution control equipment

(3) Represents increased costs due to additional maintenance outage down time caused by pollution control equipment

Schedule 7

COLORADO-UTE ELECTRIC ASSOCIATION, INC.
Summary of Pollution Control Equipment Hayden Unit 1
Twelve Months Ended June 30, 1978
($1,000)

Hayden Unit 1	Installed Costs	Annual Fixed Costs				
		Depreciation	Property Taxes	Interest Expense	Property Insurance	Total
Electrostatic Precipitator	$ 9,097.0	$394.7	$ 71.4	$317.3	$4.1	$ 787.5
Dust Control System	14.5	0.6	0.1	0.3	xx	1.0
Ash Handling Equipment	2,254.4	97.8	17.7	45.1	1.0	161.6
Ash Sludge Hauling Equipment	127.0	5.5	1.0	2.5	0.1	9.1
Ash & Sludge Disposal Land	22.2	N/A	0.2	0.4	N/A	0.6
Waste Water Concentrator	1,977.0	85.8	15.5	39.5	1.0	141.8
Holding Pond	327.6	14.2	2.6	6.6	0.1	23.5
Evaporation Pond	322.8	14.0	2.5	6.5	0.1	23.1
Coal Yard Drain Pond	36.6	1.6	0.3	0.7	xx	2.6
Ambient Air Monitoring Station	34.0	1.5	0.3	0.7	xx	2.5
Total	$14,213.1	$615.7	$111.6	$419.6	$6.4	$1,153.3

Note: xx denotes costs that are less than $100.

Schedule 8

COLORADO-UTE ELECTRIC ASSOCIATION, INC.
Summary of Pollution Control Equipment Hayden Unit 2
Twelve Months Ended June 30, 1978
($1,000)

	Installed Costs	Annual Fixed Costs				
		Depreciation	Property Taxes	Interest Expense	Property Insurance	Total
Hayden Unit 2 (CUEA Portion Only)						
Electrostatic Precipitator	$2,487.6	$124.5	$19.6	$ 85.6	$1.1	$230.8
Gas Conditioning Equipment	41.5	2.1	0.3	1.4	xx	3.8
Increased Stack Height	100.0	5.0	0.8	3.4	0.1	9.3
Dust Control System	4.4	0.2	xx	0.2	xx	0.4
Ash Handling Equipment	681.2	34.1	5.3	23.4	0.3	63.1
Ash & Sludge Hauling Equipment	37.0	1.9	0.3	1.3	xx	3.5
Ash & Sludge Disposal Land	6.7	N/A	0.1	0.2	N/A	0.3
Waste Water Concentrator	597.4	29.9	4.7	20.5	0.3	55.4
Holding Pond	98.9	4.9	0.8	3.4	0.1	9.2
Evaporation Pond	97.6	4.9	0.8	3.3	xx	9.0
Coal Yard Drain Pond	11.1	0.6	0.1	0.4	xx	1.1
Sewage System	94.7	4.7	0.7	3.3	xx	8.7
Plant Waste Drain System	290.4	14.5	2.3	10.0	0.1	26.9
NOX Reduction System	130.0	6.5	1.0	4.5	0.1	12.1
Ambient Air Monitoring Station	10.6	0.5	0.1	0.4	xx	1.0
Capacity Required to Operate P.C. Equipment	3,708.3	185.6	29.2	127.6	1.7	344.1
Total	$8,397.4	$419.9	$66.1	$288.9	$3.8	$778.7

Note: xx denotes costs that are less than $100.

Schedule 9

COLORADO-UTE ELECTRIC ASSOCIATION, INC.
Summary of Pollution Control Equipment Nucla & Bullock
Twelve Months Ended June 30, 1978
($1,000)

		Annual Fixed Costs				
Nucla Station	Installed Costs	Depreciation	Property Taxes	Interest Expense	Property Insurance	Total
Baghouses	$2,649.0	$152.1	$33.4	$ 94.8	$ 1.2	$281.5
Cooling Towers	1,098.2	63.1	13.8	38.2	0.5	115.6
Ash & Sludge Hauling Equipment	45.6	2.6	0.6	0.9	xx	4.1
Ash Handling Equipment	174.0	10.0	2.2	3.5	0.1	15.8
Holding Pond	2.0	0.1	xx	xx	xx	0.1
Evaporation Pond	40.0	2.3	0.5	0.8	xx	3.6
Waste Drain System	63.0	3.6	0.8	1.3	xx	5.7
Total	$4,071.8	$233.8	$51.3	$139.5	$ 1.8	$426.4
Bullock Station						
Baghouses	$2,152.7	$145.5	$27.1	$134.6	$13.5	$320.7
Ash Handling Equipment	640.0	43.2	8.1	40.0	4.0	95.3
Ash & Sludge Hauling Equipment	52.0	3.5	0.7	3.3	0.4	7.9
Ash Disposal Land	39.0	N/A	0.5	2.4	N/A	2.9
Evaporation Pond	86.9	5.9	1.1	5.4	0.5	12.9
Sewage System	34.2	2.3	0.4	2.1	0.2	5.0
Waste Drain System	1.0	0.1	xx	0.1	xx	0.2
Total	$3,005.8	$200.5	$37.9	$187.9	$18.6	$444.9

Note: xx denotes costs that are less than $100.

Schedule 10

COLORADO-UTE ELECTRIC ASSOCIATION, INC.
SUMMARY OF OTHER INSURANCE AND ADMINISTRATIVE COSTS OF
COMPLIANCE WITH GOVERNMENTAL REGULATION
Twelve Months Ended June 30, 1978
($1,000)

	Hayden Unit 1	Hayden Unit 2	Nucla Station	Bullock Station	Total
Other Insurance Costs:					
Pensions and Benefits Overheads (1)	$ 46.3	$ 12.9	$ 5.7	$ 7.0	$ 71.9
Injuries and Damages Overheads (1)	34.9	9.7	4.3	5.3	54.2
Total	$ 81.2	$ 22.6	$ 10.0	$ 12.3	$126.1
Administrative and General Costs (2)	$458.4	$197.2	$ 96.7	$ 70.8	$823.1

(1) Represents a pro rata allocation of personnel benefits for operation and maintenance and plant supervisory personnel direct labor assignable to operation and maintenance of pollution control equipment. Personnel benefits include Retirement Security Pensions and Benefits and Medical Insurance Benefits.

(2) Represents a pro rata allocation of total administrative and general expense to the expenses directly attributable to pollution control equipment.

Schedule 11

COLORADO-UTE ELECTRIC ASSOCIATION, INC.
COMPARATIVE ANALYSIS OF CONSTRUCTION COSTS
Bayfield-Pagosa 115 kv Line
($1,000)

	1974 Normal Construction Cost (1)	1977 Normal Construction Cost (2)	1977 Actual Cost (3)
Contract Construction	$ 1,150.0	$ 1,500.0	$ 2,805.5
Owner's Labor, Engineering and Administrative Costs	40.0	52.5	74.8
Engineering Services	75.0	98.0	102.0
ROW Acquisition - Land	50.0	100.0	160.1
ROW Acquisition - Labor and Expense	18.0	23.5	75.5
Environmental Analysis	0	0	23.1
Interest During Construction	95.0	100.0	260.7
Other	3.0	3.8	3.8
Total	$ 1,431.0	$ 1,877.8	$ 3,505.5

Costs attributable to Regulation ($1,000)	
1977 Actual Cost	$ 3,505.5
1977 Normal Construction Cost	1,877.8
Increase	$ 1,627.7
Costs attributable to Delay	
1977 Normal Construction Cost	$ 1,877.8
1974 Normal Construction Cost	1,431.0
Increase	$ 446.8

(1) Normal construction cost does not include regulatory requirements for right-of-way landscaping, construction methods, or denial of access over federal lands.

(2) Differences between 1974 and 1977 normal costs is due to inflation costs as a result of lengthened construction time.

(3) 1977 actual cost includes all those regulatory compliance costs that are above and beyond normal construction costs.

Schedule 12

COLORADO-UTE ELECTRIC ASSOCIATION, INC.
COMPARATIVE ANALYSIS OF CONSTRUCTION COSTS
Basalt-Aspen 115 kv Line
($1,000)

	1974 Normal Construction Cost (1)	1977 Normal Construction Cost (2)	1977 Actual Cost (3)
Contract Construction	$ 765.0	$ 1,000.0	$ 1,626.2
Owner's Labor, Engineering and Administrative Costs	42.7	55.8	70.7
Engineering Services	50.0	65.0	67.3
ROW Acquisition - Land	75.0	150.0	181.8
ROW Acquisition - Labor and Expense	76.4	100.0	104.7
Environmental Analysis	0	0	19.6
Interest During Construction	112.0	115.0	131.3
Other	1.2	1.4	1.4
Total	$ 1,122.3	$ 1,487.2	$ 2,203.0

Costs attributable to Regulation	
1977 Actual Cost	$ 2,203.0
1977 Normal Construction Cost	1,487.2
Increase	$ 715.8
Costs attributable to Delay	
1977 Normal Construction Cost	$ 1,487.2
1974 Normal Construction Cost	1,122.3
Increase	$ 364.9

(1) Normal construction cost does not include regulatory requirements for right-of-way landscaping, construction methods, or denial of access over federal lands.

(2) Differences between 1974 and 1977 normal costs is due to inflation costs as a result of lengthened construction time.

(3) 1977 actual cost includes all those regulatory compliance costs that are above and beyond normal construction costs.

Enclosure 4

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE
WASHINGTON, D.C. 20201

Honorable Russell Train
Administrator
Environmental Protection Agency
401 M Street, N.W., Room 1200
Washington, D. C. 20460

Dear Mr. Train:

This is in response to the request for written comments contained in the Environmental Protection Agency's proposed rulemaking on Prevention of Significant Air Quality Deterioration (Federal Register, July 16, 1973). That rulemaking called for non-deterioration to be "discussed, debated, and decided as a public policy issue, with full consideration of its economic and social implications."

Through the enactment of the Clean Air Act and similar measures, this Administration and the Congress have documented their concern that we protect and improve our environment. The ambient air quality standards set by the Clean Air Act will, when achieved, cut the nation-wide air pollution average in half. In addition, these standards can be made even more stringent by EPA should this ever be necessary to "protect the public welfare from any known or anticipated adverse effects . . . of air pollution."

The proposed rulemaking would carry these clearly desirable legislative objectives further by requiring regions to maintain air quality levels in excess of the ambient standards. EPA's request for consideration of the economic and social implications caused this Department to attempt an assessment of those implications. We conclude that the non-deterioration regulations could well impose substantial social and economic costs which in turn would likely be borne disproportionately by the poor, the aged, and the disadvantaged.

These potential consequences are discussed in some detail in the enclosed staff paper. This paper is an exploratory effort only, and it does not reach final conclusions as to the exact nature and extent of the impacts. However, it is clear from the paper's findings that a substantial risk exists that any of the alternative regulations now under consideration might impose social costs far in excess of any benefits to be gained. It would be tragic if regulations were issued which had wholly unintended adverse consequences restraining the ability of the American people to control their social and economic future.

Despite the high priority which the nation must give to improving our environment, no regulations should be promulgated which produce few benefits but risk imposing severe damage. This suggests further research, development of additional non-deterioration strategies, and, if necessary, legislative clarification of the intent of the Clean Air Act.

This Department would be glad to assist you in any way possible in your further deliberations on this subject.

Sincerely,

Secretary

Enclosure

October 1973

PREVENTION OF SIGNIFICANT AIR QUALITY DETERIORATION: SOCIAL WELFARE AND HEALTH IMPLICATIONS

This is a staff paper prepared as background for official DHEW comments on the Environmental Protection Agency's Proposed Rulemaking on Prevention of Significant Air Quality Deterioration (Federal Register, Volume 38, Number 135, July 16, 1973, pp. 18986 - 19000).

Department of Health, Education, and Welfare
Office of the Assistant Secretary for Planning and Evaluation

II. SUMMARY

While we lack detailed data from the EPA or other sources about the specific impacts of the proposed non-deterioration regulations, we believe that their costs might outweigh their benefits by a significant margin.

According to EPA, the only documentable benefits to be achieved by non-deterioration regulations would be "aesthetic, scenic, and recreational." (Proposed Rulemaking, p. 18987). However, these regulations might in fact produce no consequential benefits of this kind, and alternative regulatory approaches could probably attain equal (or greater) benefits without imposing substantial costs. Against these benefits must be weighed the risk of negative impacts on economic growth, urban development capabilities, energy resource development, consumer prices, the status of low-income persons, and the public health. Non-deterioration regulations would produce a national land-use policy giving singular attention to air quality criteria. Serious land-use distortions might result, particularly if only a few regions would be capable of absorbing population or economic growth.

While non-deterioration regulations risk imposing substantial net costs on the nation as a whole, a disproportionate share of those costs might be borne by persons of limited economic means and residential mobility. These persons would benefit relatively little from the preservation of air quality in rural areas, while they would disproportionately bear any impacts of curtailed economic growth, altered urban and rural development trends, constrained national capacity to absorb anticipated population increases, and higher consumer prices for energy and manufactured goods. These impacts could compound the difficulties faced by all levels of government in responding to the needs of the poor, the elderly, racial minorities, and persons otherwise disadvantaged.

The health impacts of non-deterioration regulations could also be adverse. Present national ambient standards account for all but inconsequential or unforeseeable health risks. If, after time passes, those standards are found to be sufficient to protect the public health, then superseding non-deterioration standards would produce no health benefits. The latter standards might well create adverse health effects should cities be delayed in their efforts to achieve the national ambient standards. Conversely, if the national ambient standards are unexpectedly found to permit dangerous levels of air pollution, then non-deterioration standards would have imposed more substantial health problems by having perpetuated a greater concentration of air pollution in densely-populated urban areas than would otherwise have occurred. Other adverse health effects might arise from energy shortages and from the possible health-impairing consequences of economic hardships imposed on low-income families.

All adverse impacts risked by non-deterioration should be investigated, quantified if possible, and weighed against any aesthetic and recreational benefits before any specific regulations are promulgated. Particular attention should be accorded to possibly irreversible effects of any alteration of national or regional development trends.

5.

It would be desirable if this effort could encompass a broader range of alternatives than just the four presented by EPA for specific comment. Among the additional alternatives which EPA might review are such definitional possibilities as measuring "deterioration" on a population exposure basis—or disallowing any "prevention" of deterioration in one region which demonstrably precludes or postpones air quality improvements in another region.

If the legal situation makes this review impossible, the regulations selected for promulgation should minimize the risk of major adverse impacts by providing for a minimum of Federal impingement on local preferences. The Federal government, in this neutral role, should avoid altering economic or demographic trends in any manner not now known to be beneficial. It should also avoid imposing substantial uncompensated costs on disadvantaged persons.

If the courts are likely to interpret Sierra Club v. Ruckleshaus and the Clean Air Act as mandating a more aggressive Federal regulatory role, it may be necessary to consider legislative amendment of the Clean Air Act to clarify where and how "significant deterioration" should be prevented.

PREVENTION OF SIGNIFICANT AIR QUALITY DETERIORATION: SOCIAL WELFARE AND HEALTH IMPLICATIONS

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I. BACKGROUND

On July 16, 1973, the Environmental Protection Agency (EPA) promulgated draft regulations (Proposed Rulemaking, Federal Register) to implement a District Court ruling which interpreted the Clean Air Act of 1970 as requiring the prevention of "significant deterioration" of air quality in "any portion" of the United States.

The non-deterioration regulations would add a wholly new set of standards to already existing requirements for reducing air pollution. Under present requirements in the Clean Air Act, EPA sets air pollution standards to "protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollution." The existing standards incorporate all known health effects and allow a margin of safety. Their attainment will reduce overall national emissions in 1980 to about half of 1970 levels (Proposed Rulemaking, p. 13988). The greatest improvements will occur in the most polluted (usually the most populated) areas. In the absence of non-deterioration regulations, these improvements would be partially offset by additional air pollution in areas which presently have pollution levels well below the national ambient standards. However, no local pollution levels would be allowed to exceed the existing standards. New non-deterioration standards would change this by prohibiting any "significant" increments in pollution levels in any place, even if those increments would not violate the national ambient standards.

In the Proposed Rulemaking, EPA stated that the effects of a "no significant deterioration" policy were "potentially so far-reaching" that the question "must be discussed, debated, and decided as a public policy issue, with full consideration of its economic and social implications" (Proposed Rulemaking, p. 18986). Because of this Department's responsibilities for the health and social welfare of the American people, this paper seeks to identify some possible adverse impacts of non-deterioration regulations.

III. SOCIAL WELFARE IMPLICATIONS OF NON-DETERIORATION STANDARDS

Non-deterioration policies would impose costs, some of which might be very substantial even if unquantifiable. In the discussion below, we describe our understanding of the potential benefits and costs of non-deterioration, particularly as they affect HEW concerns for economic and social welfare, impacts on the poor, and the public health.

A. Possible Benefits of Non-Deterioration

We are unable to identify documentable benefits of non-deterioration regulations other than scenic or aesthetic effects resulting from a reduction of visually discernible emissions. However, non-deterioration regulations might produce little or no discernible improvements in air quality--and little or no significant benefits. Indeed, steps taken to comply with such regulations might result in an adverse net scenic impact. Plant site scattering and high smoke stacks could increase the area in which air pollution might be discernible.

Although the proposed regulations might produce considerable benefits in such unique places as National Parks, they are a less effective and more costly means of producing such benefits than appropriate land-use regulation. There are many severe forms of visual blight which are not related to air quality and which non-deterioration would not prevent.

Non-deterioration regulations might allocate aesthetic benefits less advantageously than would the unhindered attainment of the ambient air quality standards throughout the nation--an attainment rendered more doubtful by non-deterioration regulations. (See Section III-B-1-c).

7.

Non-deterioration would tend to perpetuate the incidence of air pollution in urban areas. The clearer sky in a rural region might be saved only at the cost of what could eventually have been a clearer sky in or near an urban region, a sky viewed by many times more people. Such aesthetic benefits would be regressive in their incidence. Low-income people in dense urban regions would share the benefits of non-deterioration much less than higher income people who could afford to visit remote areas to enjoy the scenery. Although low-income persons living in rural areas would share in any aesthetic benefits of non-deterioration, the rural poor in such places as Appalachia may not mind looking at a less clear sky in return for improvements in their economic condition.

Finally, persons presently living in the regions which now have the cleanest air may enjoy the health benefits as a result of non-deterioration regulations, but only if there are, as some argue, possible health risks from air pollution levels meeting the national ambient standards. However, if such health risks exist, non-deterioration would probably impose an adverse net health effect insofar as it might increase the concentration of air pollution in populous areas (see Section IV).

B. Possible Costs of Non-Deterioration

Non-deterioration regulations might impose significant social welfare costs through their impacts on development patterns, residential mobility, job access, consumer prices, and other social and economic variables. On the basis of information now available, it is impossible to predict the extent to which any specific regulatory alternative would produce these consequences. While the proposed regulations differ in detail, with some appearing less restrictive than others, any of them might produce significant adverse impacts. In the absence of contrary information, the consequences described below must be considered real and serious risks of any non-deterioration regulations. . . .

1. Adverse Impacts on Development Patterns

   a. Restricted Margin for Population Growth and Economic Development

   Underlying most of the adverse potential impacts of non-deterioration regulations are their effects on growth. Existing air quality standards severely restrict emissions in presently polluted areas, but they allow for an increase in emissions in other areas. Non-deterioration standards would allow no such increase anywhere.

   Because of this, the only kind of growth possible under non-deterioration standards might be "clean" growth, concentrated in low-emission industries. For the nation as a whole, entirely "clean" growth is unlikely, if not impossible. The industries emitting the particulates and sulfur oxides to be restricted by the proposed regulations include petroleum refineries, steel mills, fossil-fuel electric plants, and other basic industries. So many other industries are dependent on their products that these industries are essential to most economic growth. Virtually no major human activity is likely to avoid creating direct or indirect effects on air quality.

If non-deterioration regulations do not allow for a sizeable margin of growth, the adverse impacts might be profound. Even with a declining birth rate, this country's population is expected to increase by some 60 million persons (30%) in the next thirty years. Without a 30% growth in economic production during the same period, we would suffer an absolute decline in per-capita income.

Moreover, non-deterioration regulations might severely distort whatever growth they do not prevent by severely limiting the number of places where growth could occur. Three major types of settings can be distinguished, only the last of which enjoys any significant margin for growth.

First, the most polluted areas (usually the largest SMSAs), which start well above the ambient standards, at best have little margin for further growth with or without non-deterioration regulation. These areas need to apply extreme control measures just to meet existing standards. Their further growth depends largely on their ability to shift new pollution generation to nearby places. Non-deterioration standards might reduce whatever small margin for growth which already exists by effectively prohibiting pollution shifting within a decade. For the remainder of this century, such cities might be faced with the choice between using any additional margin for either increased local production of goods and services to increase the economic well-being of existing residents or the absorption of additional population. The Air Quality Control Regions with air pollution levels substantially exceeding the national ambient standards account for only 25% of the land area of the country but 50% of the population.[1]

Second, regions (usually encompassing small towns and rural areas) which are now well below the ambient standards would be like the largest cities in their inability to accommodate economic or population growth because of non-deterioration standards. With air pollution already at or near background levels, control measures would be unlikely to improve air quality very much, and air quality would almost surely be worsened by significant population or production increases. Therefore, their per capita margin for growth would be very small. Air Quality Regions which are well below ambient standards contain 60% of the land area but only 30% of the population.

Third, the impact of the non-deterioration standards on areas (typically medium-sized cities) now at or near the ambient standards might be the opposite. These cities have a much greater per-capita margin to be gained by control measures.

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[1] These numbers and those which follow correspond to EPA's priority classifications of AQCRs for SO_x in the continental United States. The three cases described here represent priority classifications I, III, and II, respectively. Since air quality is measured at points rather than for AQCRs as a whole, these calculations are technically incorrect and are approximations at best. If particulates are taken into account along with SO_x, such calculations would be conservative.

Accordingly, they would be under great pressure to absorb much larger population and production increases. However, even their capacity for population absorption and per-capita growth would be reduced by their inability to shift pollution to rural areas. The Air Quality Control Regions of this type account for 15% of the land area and 20% of the population of the United States.

Therefore, non-deterioration regulations could have a restrictive and distortive impact on national growth trends. Air Quality Control Regions of the first and second kind (accounting for 85% of the land and 80% of the present population) might have little or no leeway for accommodating long-run growth of any kind. If the proposed non-deterioration standards were to allow only one or two major emission sources per Air Quality Control Region, they would permit only five or ten years of normal economic growth. Growth-constrained areas could choose between economic or population growth at first. Thereafter, they might have difficulty in maintaining normal per-capita income growth even without additional population growth. The remaining cities (those now at or near the ambient standards) might therefore be faced with the brunt of population growth in the next several decades--and they too might eventually run out of margin.

These developments might have significant adverse consequences for most people, but particularly for low-income persons and persons who, for reasons of age or race, are constrained in their ability to change residential locations.

b. Constraints on Residential Mobility and Job Access

Non-deterioration standards might substantially limit residential and job choices by severely constraining the availability of sites for jobs and housing. At present, some 17% of the American population move every year, about 5% across state lines. Such mobility is possible only to the extent that housing vacancies and job opportunities exist. This tendency reflects how people "vote with their feet" for better job opportunities, housing, schools, local governments, physical environment, and other factors. Residential mobility produces economic benefits for specific groups of persons and for the nation as a whole. For example, a major factor contributing to growth in black incomes during the past fifteen years has been exposure to urban job opportunities in the North, and the lack of mobility both within and among cities has been found to be a major factor in Britain's poor economic performance in the 1960's.

When mobility is impeded, the biggest losers are racial minorities, the poor, and the aged. Racial minorities suffer from inner-city residential segregation and its attendant consequences of higher housing costs, lower housing quality, and loss of suburban job opportunities. Racial considerations aside, the biggest losers from mobility restrictions are the aged and the poor. Many older people are locked into housing which does not meet their needs because they have nowhere else to go or cannot undergo the physical strain of moving. Low-income families are often faced with scarce housing opportunities in areas adjacent to available jobs, since low-cost housing tends to be concentrated in specific neighborhoods rather than spread evenly throughout a metropolitan area.

This restricted low-cost housing market is exacerbated when general housing shortages exist. Restrictions limiting the amount of developable land tend to raise housing prices, inhibiting the movement of low-income persons to developing areas. Also, environmentally-inspired restrictions on housing construction (e.g., restrictions on sewage capacity) in such areas as Washington, D.C., have contributed to substantial increases in the price of housing, tending to deny low-income persons the housing they otherwise could afford.

c. Freeze and Mismatch of Development Patterns

Any restrictions on jobs and mobility might have specific geographic dimensions aggravating their impacts. In particular, they might tend to freeze or exacerbate present development patterns. Rural regions with concentrations of low-income persons and little industry might never grow substantially in per capita production and income. Alternative growth patterns could hinge on the development of tourism, agriculture, and forestry (the last two of which have little employment generating effects). With the rural poor having little economic future, trends towards migration of the poor, unskilled, and dispossessed to big cities might continue and perhaps accelerate.

Industrial siting patterns might be unlikely to provide large cities with means for keeping pace with rising in-migration--or even for coping with the unemployment problems large cities already face. It is true that factories which otherwise would relocate in rural areas might instead move to suburban fringe settings still within their original SMSAs. Fringe siting might preserve (or possibly expand) total job opportunities in some SMSAs. Such increases in job opportunities could benefit the urban poor.

However, fringe jobs would not necessarily correspond to low-income housing and transportation access. Indeed, it is possible that the inability of industries to relocate in rural areas might reduce job opportunities for the urban poor. If industries which would have moved to rural areas move to suburban areas instead, they might be equivalently inaccessible to their original inner-city work force. However, they would still be polluting the air in the same Air Quality Control Region. Encircling the SMSA, these industries might worsen the local air quality to the extent that factories remaining in the city center might be forced to curtail operations just to meet the national ambient standards, to the disadvantage of the predominately low-income work force. If this were to occur, non-deterioration regulations would reduce the total number of jobs available to the inner-city poor.

- Those cities and towns fortunate enough to be now at or near the national ambient standards would enjoy the flexibility to orchestrate housing and development choices. It is possible, but not necessarily likely, that these medium-sized cities would take advantage of this flexibility to expand job opportunities for in-migrating low-income persons. These cities presently account for a small percentage of the national low-income population, and their governments might resist future in-migration of the poor through housing curtailments, zoning laws, or other means. Some cities are already passing laws limiting future population growth.

These problems could impact some regions more severely than others. For example, the proposed regulations might prevent the state of North Carolina from adding enough electric power to meet the anticipated growth in population and per-capita energy demand by 1980. The state's current growth rates might be halted by the end of the decade. In Appalachia as a whole, reductions in current emissions from TVA coal-fired plants might allow only a limited margin for future industrial growth. This margin would be available primarily near existing plant sites, which do not closely correspond to existing growth centers or concentrations of low-income persons.

In sum, whatever national growth might be possible under non-deterioration regulations might be distorted by industries' difficulties in tapping new labor supplies and by low-income persons' lack of access to new job opportunities. The greatest economic growth would be likely to occur in the wealthiest communities, and growth trends in the South and other developing areas might be halted. Existing geographic disparities in income could widen, with the losers on the margin predominantly the poor.

d. Major Disruptive Effects

Large cities' inability to shift major pollution sources to nearby non-deteriorable areas could have catastrophic impacts, requiring either complete shutdown of major sources or extremely harsh restrictions on smaller sources. Such crises could well have their worst impact on the poor and near-poor. For example, the recent coal strike in Britain caused power shortages, substantial layoffs in manufacturing industries, and vast secondary effects on unemployment through the economy--most severely impacting blue-collar and low-wage service workers. Similarly, it was the aged and the isolated poor whose health suffered when the power went off.

2. Increased Prices for Consumers

Non-deterioration regulations might have substantial effects on the prices and availability of consumer items, the brunt again to be borne by the poor.

Current and anticipated emission control requirements will alone cause substantial cost increases in consumer goods. However, the imposition of more stringent non-deterioration standards might provoke additional major cost increases in energy production and manufacturing. Consumers would then necessarily be faced with higher prices for energy, transportation, and manufactured goods in general. These increases would supplement the already very substantial consumer price increases created by existing law. For example, the 1976 auto emission standards alone are expected to cost consumers about $10 billion a year, and total incremental costs of presently-mandated pollution controls are expected to average about $400 per family per year by 1980.

Low-income persons would shoulder a disproportionate share of these price increases, as they spend a relatively high proportion of their income on transportation and manufactured goods. Existing utility rate structures also bear heavily on low-income families, and the incidence of energy price increases would depend on adjustments in these rate structures.

IV. HEALTH IMPACTS OF NON-DETERIORATION REGULATIONS

According to the terms of the Clean Air Act, the national primary ambient air quality standards are those "requisite to protect the public health" while "allowing an adequate margin of safety." The stricter secondary standards are not intended to enhance public health directly, but rather to "protect the public welfare from any known or anticipated adverse effects...." Therefore, barring unknown or inconsequential health risks, emission standards more stringent than the secondary standards would produce no direct health benefits. They would, however, entail certain health risks.

First, by complicating the efforts of SMSAs to shift pollution to rural areas, non-degradation regulations might jeopardize their efforts to attain the national ambient air quality levels on schedule (or, perhaps, at all). Should this happen, the claimed adverse health effects of air pollution would impair the health of susceptible people living in densely-populated areas which would otherwise have cleaner air.

Second, to the extent that any currently unknown health risks might be imposed by air quality levels which satisfy the national ambient standards, non-deterioration would increase, not decrease, the number of persons exposed to those risks. Since non-deterioration regulations would preserve air quality in sparsely-populated areas while probably retarding air quality improvements which otherwise might occur in densely-populated areas, they would probably have the long-run effect of increasing the national per-capita exposure to air pollution. Adverse health effects from any given air quality level are directly proportional to the number of humans exposed.

19.

Third, to the extent that non-deterioration regulations alter urban development trends, impede economic growth, or impose disproportionate cost burdens on low-income persons, they might create adverse second-order health effects. Should non-deterioration regulations increase unemployment and consumer prices, they might impair the ability of low-income families to improve their diets, housing, and medical care. Physical and mental health problems can be correlated with low-income status, although the causal links are not well understood.

Fourth, if the enforcement of non-deterioration regulations should provoke electricity blackouts, fuel shortages, or other crises, emergency health problems might arise. Elderly persons and low-income families with health problems or inferior housing would be particularly vulnerable to pneumonia, exposure, household accidents, and other potential effects of such crises.

In sum, the proposed regulations appear to involve risk of damage to human health, with no prospect of offsetting benefits. At a minimum, they increase total human exposure to air pollution.

V. ACTIONS NECESSARY BEFORE SELECTING AN APPROPRIATE NON-DETERIORATION STRATEGY

A. Research and Analysis of Impacts

The magnitude and incidence of the non-deterioration impacts described above are very uncertain. On the basis of the limited information available, it is possible to conclude only that non-deterioration regulations would create a substantial risk of adverse impacts far outweighing the benefits to be gained. The basis for an informed judgment cannot exist until the potential consequences of alternative non-deterioration strategies can be researched, quantified (where possible), and evaluated.

The costs and benefits of the full causal sequence of foreseeable outcomes should receive this review. Where uncertainties or subjective value considerations are important, this should be made clear. Particular attention should be given the possibly irreversible effects of any alternative on national or regional development trends.

B. Specification and Application of Appropriate Criteria

A reasonable decision requires not only the appropriate information, but also criteria upon which to judge the information. Four criteria are paramount.

First, there should be a general presumption against Federal intervention which constrains and distorts local choices needlessly, particularly when the consequences might be very severe. Federal policy must be focused as precisely as possible to achieve its specific objectives, avoiding ancillary impacts which are not necessary complements to the achievement of the objectives sought. In effect, the proposed non-deterioration regulations would regulate local land-use decisions almost entirely on the basis of air quality considerations alone. Therefore, the regulations might arbitrarily and unnecessarily constrain local decisions affecting development patterns, the availability of local employment, the status of low-income groups, and other areas of local concern. To prevent serious distortions, respect should be accorded local preferences and a very neutral Federal role adopted.

Second, no public policy should impose costs greater than its benefits. The measurement of policy impacts, even if the magnitude of consequences is certain, is tremendously difficult. Many of the costs and benefits of non-deterioration standards are qualitative or intangible. Including them in the balancing process, although difficult, must at least be attempted.

Third, equity considerations warrant special concern. As much as possible, the persons who benefit from environmental improvements should be the ones to pay the costs. Disproportionate costs should not be imposed on economically disadvantaged persons unless equivalent compensation can be offered. Also, people in like circumstances should be treated similarly, without arbitrary discrimination based on geographical or economic circumstances irrelevant to the issue in question. Equity issues become particularly important in such issues as non-deterioration, where program benefits would not substantially and undebatably outweigh program costs.

22.

Fourth, the risk of major adverse consequences warrants special care in devising standards to minimize risks. The risk argument has previously been used to justify greater environmental protection than existing knowledge would justify. The Clean Air Act itself calls for ambient standards to be set "to protect the public welfare from any known or anticipated adverse effects." But the argument cuts the other way where, as here, the foreseeable risks of environmental controls are of such magnitude and consequence. Reasonable regulations should protect the public from the potential adverse effects of non-deterioration itself.

VI. CONCLUSION

The evaluative information and criteria described above should be applied to a broad set of alternatives before specific regulations are selected for promulgation. Alternatives which appear virtually certain to impose adverse impacts far exceeding their benefits (e.g., EPA's first and second proposed regulations) should not be pursued. EPA's third and fourth proposed regulations contain enough modifying provisions to warrant further analysis, but they are not, it is hoped, the only strategies that can be considered. For example, the application of various definitions for the "prevention of significant deterioration" could directly influence the impacts of non-deterioration enforcement. A local instance of deterioration might not be deemed "significant" if the imposed costs of its prevention do not outweigh its benefits. "Deterioration" might be measured in terms of population exposure to air pollution rather than in terms of geographic increases in contaminant levels. Finally, significant deterioration might only be "prevented" in situations where the preservation of one region's air quality does not come at the expense of the air quality in another region. These definitions might not conflict with the Sierra Club v. Ruckleshaus court's holding that significant deterioration is to be measured in "any portion" of the United States rather than in the nation as a whole.

If comprehensive policy review or the adoption of a strategy not already proposed is rendered impossible by any legally-imposed decision deadline, the regulations selected for promulgation should hedge against the risk of creating adverse impacts by providing for a neutral Federal role. If a policy error is to be made, it should be made on the side of caution.

If the courts are likely to interpret Sierra Club v. Puckleshaus and the Clean Air Act to require the adoption of high-risk, stringent non-deterioration regulations, it might be desirable to consider legislative amendment of the Clean Air Act to clarify where and how "significant deterioration" should be prevented.